

LAWS OF  
CEMETERY  
ASSOCIATIONS

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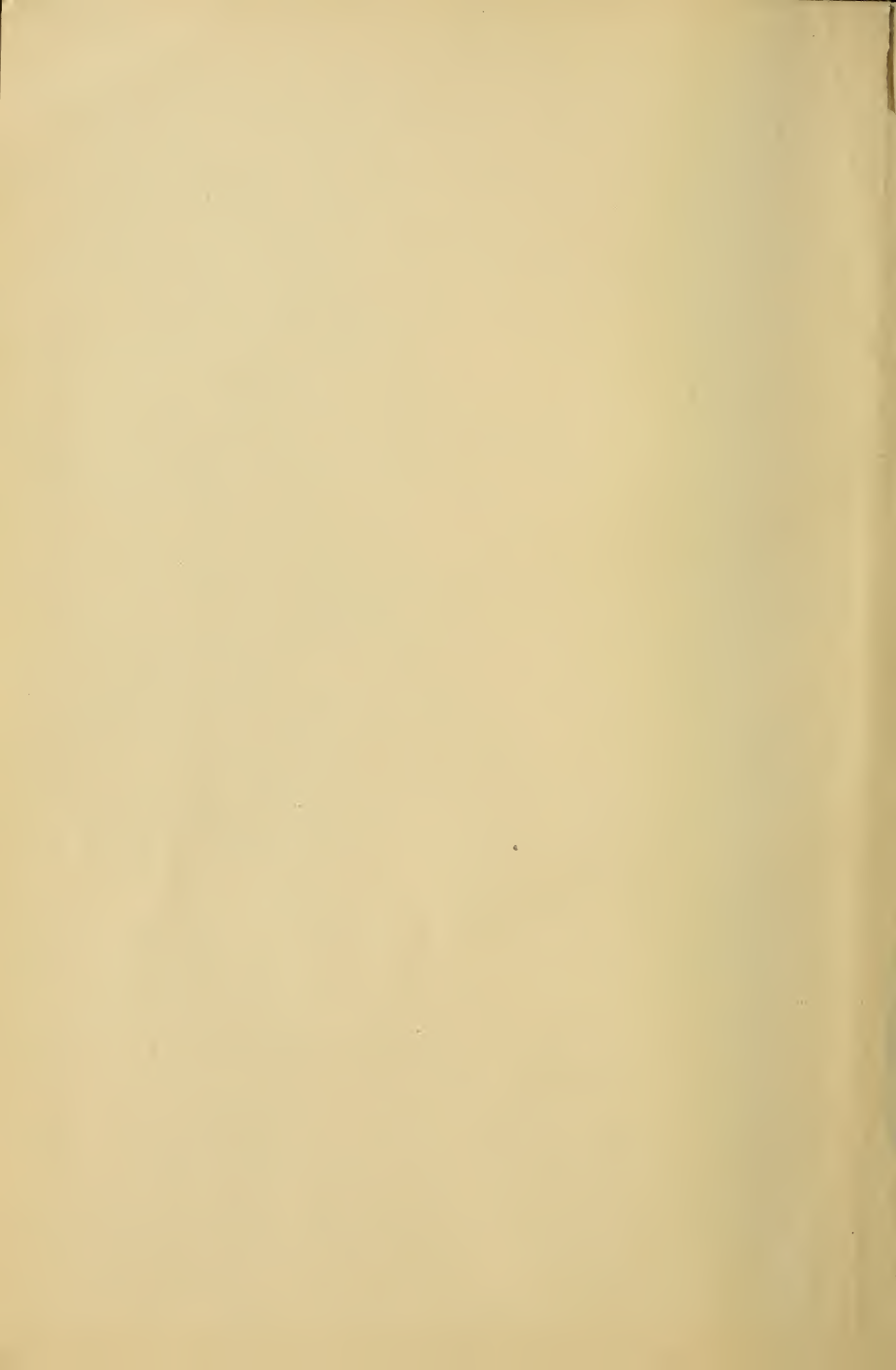
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## LAW

AS TO

## Cemeteries, Undertakers, Embalmers and Burials

IN THE

STATE OF NEW YORK,

WITH

## Statutory Amendments down to and including the Session of 1901,

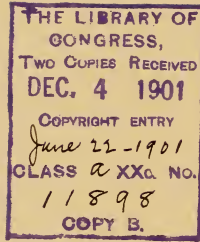
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## PREFACE.

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The object of this compilation is to present, as briefly as possible, the entire body of law of the State of New York as to cemeteries, undertakers, embalmers and burials. It includes the substantial parts of *all* the unrepealed laws of the State down to and including the session of 1901, as also *all* the case law of the State, as well as prominent decisions of the other States, relating to the subject. As it is intended for the use, not only of lawyers, but of cemetery trustees and superintendents, religious corporations, clergymen, town, village and city officials, undertakers, embalmers, physicians, dealers in monuments and cemetery structures, lot owners, and their friends and relatives, etc., etc., the use of technical terms has been avoided.

A useful collection of forms has been added.

May 29th, 1901.





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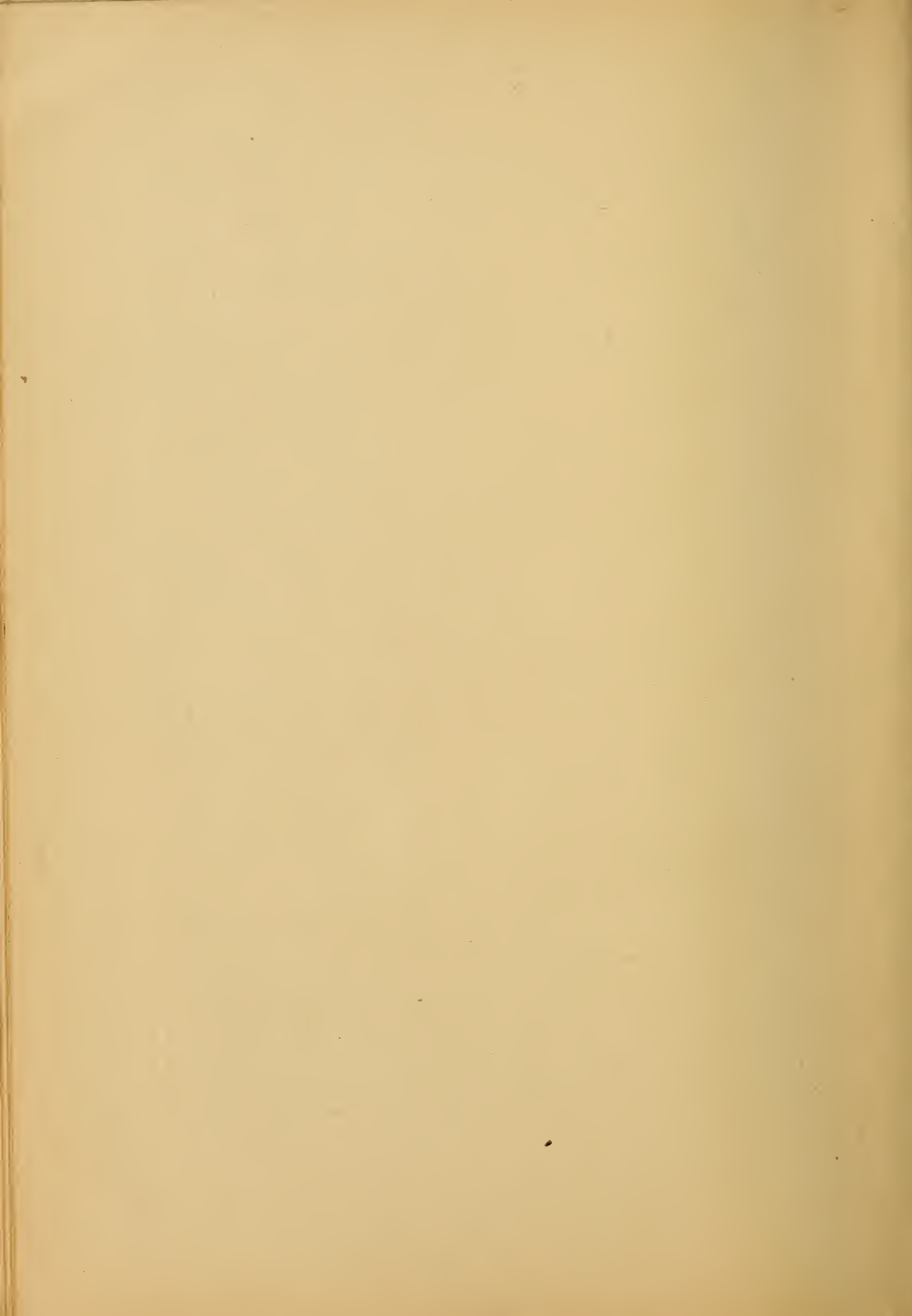
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# CEMETERY LAW.

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## CHAPTER I.

### CEMETERIES DEFINED.

A cemetery is defined by Webster as a place or ground set apart for the burial of the dead. It was anciently forbidden to bury the dead in churches or temples, or even in cities (Gibson, p. 453).

The early Christians, however, buried their dead in the catacombs, a series of intricate underground chambers. After the persecutions had ceased, it began to be the practice to inter ecclesiastics or very holy persons in the churches (Gilbert v. Buzzard, 1820, 3 Phil. 349). And about the eighth century the custom originated in England of burying the dead in the ground adjoining the church, so that the departed souls

might have the benefit of the prayers of the faithful attending the church.

A cemetery is created by the act of setting it apart for the burial of the dead, marking it, and distinguishing it from the adjoining ground as a place of burial. Unless the ground is so set apart, it does not become a cemetery, although it is in the possession of a cemetery corporation (*Concordia Cemetery Association v. The Minnesota & N. W. R. R. Co.*, 121 Ill. 199). Nor can a person be indicted for ploughing up part of land (sold to him) which had been used as a graveyard, when there was no reservation as to such land in the deed, and steps had not been taken to establish it as a private burying ground under the statutory regulation (*Winters v. State* 9 Ind. 172). But when the ground has been enclosed, and maintained exclusively as a cemetery, it is a "place of burial" within the meaning of the Constitution of Louisiana, exempting such property from taxation, except it be used for private profit, and the words of the Constitution cannot be restricted to the portion of the ground actually occupied by buried corpses (*Metairie Cemetery Association v. Board of Assessors*, 37 La. Ann. 32).



A cemetery differs from a church yard by its locality and incidents; by its locality, as it is separate and apart from any sacred building used for the performance of divine service; by its incidents, that inasmuch as no vault or burying place in an ordinary churchyard can be purchased for a perpetuity, in a cemetery, a permanent burial place can be obtained. (Wharton's Law Lexicon, 8th ed. 119.)

The words cemetery, place of burial, graveyard, and burial ground, have been held to be similar in meaning (Jenkins v. Andover, 105 Mass. 104; Fore v. Hoke, 48 Mo. App. 262; Lay v. State, 12 Ind. App. 362; Metairie Cemetery Association v. Board of Assessors, 37 La. Ann. 25).

A cemetery is as public a place as a courthouse or a market, and the accommodation of the public requires a highway to it (Cemetery Association v. Meninger, 14 Kan. 312).

In California, six or more human bodies buried at one place constitute the place a cemetery (Political Code, sec. 3106).

## CHAPTER II.

## KINDS OF CEMETERIES.

Cemeteries may be classified as:

1. Public cemeteries.
2. Cemetery associations.
3. Cemeteries under the control of religious corporations or churches.
4. Private cemeteries and family cemeteries.

1. PUBLIC CEMETERIES.—Cemeteries which are under the control of cities, towns and villages are public cemeteries. These are sometimes acquired by exercising the right of eminent domain, and sometimes by dedication, gift or purchase. In the case of ancient cemeteries, the control of which have been thus assumed, a question may sometimes arise as to whether there is sufficient proof of dedication to public use as a burying ground. In Massachusetts it was held that an indictment would be sustained against one for cutting trees on a

burial ground situate on a point of land nearly surrounded by water, the only approach to which was through defendant's land, of which the burial ground was originally part, when it appeared that others besides defendant's ancestors were buried there, and that burials had continued to be made down to the time of indictment, and that no one else had claimed any control over the ground until the town had assumed charge of it about three years previously (*Commonwealth v. Veall*, 2 Allen, Mass. 512). And in another case in the same State it was held that a place might be shown to be a public burial ground by evidence of dedication, occupation or user; that if it had once acquired that character, it did not cease to have it by mere disuse; that if it were a mere private place of burial, set apart by some former owner of the soil, for the interment of his own relatives, the defendant, who had been indicted for disfiguring a public burial ground, must be acquitted; and that it was not necessary to show that it was extensively used, and by many persons and families, but that burials had been made there by others than the owners of the soil and as of right (*Commonwealth v. Wellington*, 7 Allen, Mass. 299).

2. CEMETERY ASSOCIATIONS.—As burial places are indispensable, the State, whose duty it is to provide such places, has power to delegate that duty, and to incorporate persons into associations. "Amongst the most beneficent acts of government is that legislation which fosters such enterprises, and clothes an aggregate number of citizens with power to adorn and beautify grounds that shall receive the remains of the dead" (Town of Lake View v. Rose Hill Cemetery Co., 70 Ill. 191). And when it has empowered such an association by charter to acquire land for cemetery purposes, a subsequent act to prevent the exercise of such power within the limits originally granted is unconstitutional (same case, 70 Ill. 191).

3. CEMETERIES UNDER THE CONTROL OF RELIGIOUS CORPORATIONS OR CHURCHES.—These are the most ancient kinds of cemeteries.

The practice of interring eminent persons within churches is still continued to some extent. When in the early times interments in the churches had become frequent, it became the practice, as mentioned in Chapter I, to appropriate the ground adjoining the church, for

cemetery purposes, after it had been enclosed and consecrated. It was held that a minister of the Church of England could not refuse burial to two children of a Dissenter who were his parishioners (*Kemp v. Wickes*, 3 Phila. 264). But cemeteries controlled by the Catholic Church are subject to its rules, which forbid the interment of persons who do not die in communion with it.

4. PRIVATE AND FAMILY CEMETERIES.—In early colonial history it became customary to bury one's dead on one's own land, as a matter of convenience, the inhabitants being few and scattered. Whenever, however, the lands were sold, the part so appropriated to the burial of the dead was excepted or reserved.

Provision has been made for the incorporation of such cemeteries. See next chapter.

## CHAPTER III.

## INCORPORATION OF CEMETERIES.

Cemeteries may be incorporated under special law, when in the judgment of the legislature the objects of the corporation cannot be obtained under general laws (Const. N. Y. Art. 8, sec. 1).

They may be also organized under the general laws.

Under the scheme of classification of corporations in the General Corporations Law, Ch. 687 of 1892, sec. 2, cemetery corporations incorporated under the general laws may be divided into stock and non-stock corporations.

A stock corporation is a corporation having capital stock divided into shares, and which is organized for profit (sec. 3, subd. 2).

A non-stock corporation is every other kind of corporation (subd. 3).

A cemetery corporation may be organized for business purposes, as a stock corporation, under the Business Corporations Law (as amended by



Ch. 520 of the Laws of 1901), by filing a certificate by three or more persons, specifying:

- (1) The name of the proposed corporation.
- (2) Its purpose.
- (3) Its capital and preferred stock.
- (4) Number of shares, each not less than \$5 or more than \$100, and amount of capital not to be less than \$500.
- (5) Location.
- (6) Duration.
- (7) Directors, not to be less than three.
- (8) Names and post-office addresses of directors for the first year.
- (9) Names and post-office addresses of the subscribers of the certificate, and number of shares to be taken by each.
- (10) Any other provisions as to its government and powers not contrary to law.

Such a corporation will be governed by the provisions of the Business Corporations Law, the General Corporation Law, and the Stock Corporation Law, and the several amendments of these laws.

See memorandum in report of Statutory Revision Commissioners in explanation of the Membership Corporation Law.

A non-stock corporation is defined by the General Corporation Law, sec. 2, as:

- (1) A religious corporation; or
- (2) A membership corporation.

For the purposes of this chapter, non-stock cemetery corporations may be classified as:

(1) Cemeteries controlled by religious corporations.

(2) Membership corporation cemeteries, consisting of:

- (a) Cemetery corporations.
- (b) Private cemetery corporations.
- (c) Family cemetery corporations.
- (d) Unincorporated cemeteries, whose lot owners determine to become a corporation under Article 3 of the Membership Corporation Law.

(3) Cemeteries belonging to or controlled by municipal corporations.

A municipal corporation includes a county, town, village, and city. (General Corporation Law, sec. 3.)

The general laws relating to religious corporations include the General Corporation Law and the Religious Corporation Laws (Laws 1895, ch. 723), and a chapter descriptive of the organ-

ization of such a corporation belongs more properly to a work on Religious Corporations.

Before organizing a cemetery corporation under the Membership Corporation Law, Art. 3 of Chapter 43 of the General Laws (Laws 1895, ch. 559), reference must be had to the provisions of the General Corporation Law, relating to all corporations, and to Art. 1 of the Membership Corporations Law, applicable to all membership corporations.

By sec. 2 of the last mentioned law, it is provided that "the term membership corporation means a corporation hereafter incorporated under this chapter, or heretofore incorporated under any law repealed by this chapter; but does not include a membership corporation created by special law, and the term membership corporation created by special law means a corporation created by special law for purposes for all of which a corporation might be created under this chapter."

And by sec. 3 it is provided that "if in any other article of this chapter there be a provision in conflict with the provisions of this article, such provision of such other article shall prevail. If in any other article of this chapter

there be a provision relating to a matter embraced in this article, but not in conflict therewith, such provision in such other article shall be deemed to be additional to the provisions of this article, relating to the same subject matter, and both provisions shall, in such case, be applicable."

By sec. 40 of Article III, relating to Cemetery Corporations, the term cemetery corporation is defined to mean a corporation theretofore "created for cemetery purposes under a law repealed by this chapter, or hereinafter created under this article, but the general term cemetery corporation does not include a family cemetery corporation or a private cemetery corporation," and it is provided that "this article does not apply to cemeteries belonging to religious or municipal corporations."

The laws referred to in the last section as repealed include the general law of 1847, Ch. 133, for the incorporation of rural cemeteries, and the acts amendatory thereof.

CEMETERY CORPORATIONS.—Sec. 41 of Article 3 of the Membership Corporation Law,

provides that seven or more persons may become a cemetery corporation by filing in the offices of the secretary of state, and clerk of the county where the cemetery of such corporation, or a part thereof, is to be situated, a certificate specifying

(1) Each county, town or village, in which such cemetery, or part thereof, is to be situated;

(2) The name of the proposed corporation;

(3) The times of holding its annual meetings;

(4) The number of its directors, either six, nine, twelve or fifteen;

(5) The names of the persons to be directors until others are elected in their places, divided into three equal classess, each class to hold office until the first, second and third annual meetings thereafter respectively.

(6) A percentage of the surplus proceeds of sales of lots, after payment of the purchase price of the real property by the corporation, to be invested as a permanent fund, the income of which shall be used for the improvement, preservation and embellishment of the cemetery grounds, and for no other purpose.

Such certificate shall not be filed without the approval indorsed thereupon, or annexed thereto, of a justice of the Supreme Court.

On filing such certificate, in pursuance of law, the signers thereof, their associates and successors, shall be a corporation, in accordance with the provisions of such certificate.

This section substantially re-enacts secs. 1-3 of the Act of 1847, Ch. 133.

It has been held that notwithstanding the use of the word "rural" in that act, a cemetery incorporated thereunder may be located within a city, and it is not necessary to obtain the city's consent to its location, although the city, when authorized by the legislature, may prohibit burials therein (*People v. Pratt*, 129 N. Y. 68; *aff'g* 14 N. Y. S. 804).

PRIVATE CEMETERY CORPORATIONS.—Under sec. 56 of the Membership Corporation Law, seven or more persons may become a private cemetery corporation by setting off for a private cemetery inclosed real property of not more than three acres, and by electing at a meeting of the proprietors of the real property so set off, at which not less than seven shall be present,



three of their number to be directors, to hold office for five years. The chairman and secretary of such meeting shall make, sign and acknowledge, and file in the office of the county in which such real property is situated, a certificate containing the name of the corporation, a description of the lands so purchased or set apart, and the names of the directors. Additional lands may be acquired, not exceeding three acres.

FAMILY CEMETERY CORPORATIONS.—It is provided by sec. 57 of the Membership Corporation Law (as amended by Laws of 1901, Ch. 390), that lands may be dedicated for a family cemetery by an individual, or by the executors of a deceased person with the written authority of the heirs, etc. The quantity of land so dedicated shall not exceed three acres, nor be located within one hundred rods of a dwelling house, unless the land so dedicated shall be already in actual use for burial or cemetery purposes within the limits of a city. The instrument of dedication shall describe the lands, may appoint directors to manage such cemetery, may prescribe or provide for making the by-laws, etc., may di-

rect the manner of choosing the directors, may fix or provide for their qualifications, and may grant to them money or personal property for maintaining or improving the cemetery. The instrument of dedication with the written authority of the heirs, etc, of a deceased person when the dedication is made by his executor, etc., must be filed in the office of the clerk of the county where the land is situated.

The directors, before entering on their duties, must file in the office of the clerk of the county where the land is situate, a written acceptance of their appointment; and thereon such directors and their successors shall be a corporation by the name expressed in the instrument of dedication.

UNINCORPORATED CEMETERIES.—It is provided by sec. 61 of the Membership Corporation Law that lot owners in an incorporated cemetery may cause a notice to be posted in at least six conspicuous places in the city, town or village in which such cemetery is located, and published once in each week for three successive weeks in a newspaper, if any, published in such municipality, stating that at a time and place



specified in such notice, a meeting of the owners of the lots in such cemetery, should be held to determine upon the question of incorporating such cemetery pursuant to Article III of the Membership Corporation Law.

By sec. 62 such meeting shall be held at a convenient place in the city, town or village in which such cemetery is located, not less than twenty, nor more than thirty, days after the first posting and publication of the notice of meeting. At such meeting, every owner of a lot in such cemetery, represented thereat in person or by proxy, shall be entitled to one vote, for each lot owned by him. Any owner of a lot may, by written proxy, designate a person to represent him at such meeting, and the person so designated shall on presentation of the proxy to the chairman of the meeting, have all the powers of a lot owner present thereat. The persons entitled to vote at such meeting shall elect a chairman and secretary thereof, and shall determine by ballot the question of whether or not the lot owners shall organize as a corporation pursuant to Article III of the Membership Corporation Law. The ballots in favor of such proposition shall have the word "yes" thereon,

and the ballots against shall have the word "no" thereon.

Sec. 63 (as amended by Ch. 480 of 1900) provides that if a majority is in favor of such proposition, the persons entitled to vote at such meeting shall select three lot owners to incorporate, and the provisions of Article 3 of the Membership Corporation Law shall be applicable to the formation and management of such corporation, except that three persons may incorporate, and the corporation shall not be required to have more than three directors. Upon the formation of such corporation, the lot owners shall be members thereof, and the corporation shall become vested with the title to such unincorporated cemetery, and the personal property connected therewith, subject to all the provisions of law in relation to cemetery corporations. And provision is made, when the title to such cemetery has vested in the town, for the release by the supervisor of all interest in the cemetery to the corporation.

CEMETERIES BELONGING TO OR CONTROLLED BY MUNICIPAL CORPORATIONS.—The statutes authorizing municipal corporations to acquire

cemeteries or lands for cemetery purposes generally provide that such lands shall be part of the corporate property.

The Town Law, sec. 193, as amended in 1898, provides that the board of trustees of burial grounds thereby constituted shall be a corporation capable of accepting gifts, etc., of personal property for the improvement of the cemeteries.

## CHAPTER IV.

## HOW LANDS ARE ACQUIRED FOR CEMETERIES.

EMINENT DOMAIN.—Lands may be acquired for cemetery purposes by exercise of the right of eminent domain, but as under that right private property can be only taken for a public use, a petition by a cemetery corporation to condemn land for the use of a cemetery must show that the privilege of interment is open to the public, as a cemetery may be private as well as public, and it must also show affirmatively a public need for the cemetery, and where a statute of West Virginia provided that no land should be taken for cemetery purposes which lay within four hundred yards of a dwelling house, the petition should contain an allegation to meet this provision (*Fork Ridge Baptist Cemetery Association v. Ridge*, 33 W. V. 262) in which case it was also held that as private property can be taken for public uses, against the consent of the owner, only as provided by law, the statutes

regulating such proceedings must be strictly pursued. And when land is sought as an enlargement to a burying ground already in use, it is sufficient if the additional land is to be for the use of the public, even though the existing ground had been for the use of individuals only (*Edwards v. Stonington Cemetery Association*, 20 Conn. 466).

In New York State it has been held that the question whether property sought for cemetery purposes was for a public or private use, is a judicial question, and to be passed upon by the courts, and that the legislature is not the sole judge as to whether the right of eminent domain may be exercised, and as the use of land for rural cemetery associations, incorporated under the Act of 1847, Ch. 133 (the general law as to such associations) is private, and not public, the Act of 1873, Ch. 452, so far as it authorizes the taking of lands by right of eminent domain, by such associations is unconstitutional (*Matter of Deansville Cemetery Association*, 66 N. Y. 569).

Inasmuch as the general law of 1847, Ch. 133 (except sec. 10), has been repealed by Laws 1895, Ch. 559 (General Laws of New York,

Membership Corporation Law, sec. 45, as amended in 1896), providing that if the certificates of incorporation of rural cemeteries *do not exclude any person from purchasing on equal terms with others*, a burial lot, such a rural cemetery corporation may secure lands by condemnation, but the fact must be alleged in the petition (The Stannards Corners Rural Cemetery Association, 14 Mis. Rep. 27).

The land which may be so acquired must be exclusively for cemetery purposes, and must not consist of more than two hundred acres, in one continuous tract, wholly or partly within the county in which its certificate of incorporation is recorded (Membership Corporation Law, sec. 45), except that in the counties of Kings, Queens, Rockland, Westchester, or Erie, lands shall not be so acquired or set apart except with the consent of the board of supervisors, which consent may be granted upon such conditions as, in the board's judgment, the public health or good may require (Membership Corporation Law, sec. 42, as amended in 1896) and the section provides for the method of obtaining such consent, and it is also thereby provided that the board of supervisors of each such county, may



make such regulations as to the mode of burials in any cemetery in the county, as in its judgment the public health may require.

A cemetery corporation may also acquire by condemnation, exclusively for the purposes of a cemetery, any real estate or interest therein necessary to supply water for the uses of such cemetery, and the right to lay conduits and water pipes over the lands of others; the right to intercept and divert the flow of waters from the lands of riparian owners, and from persons owning or interested in any waters. except that waters shall not be taken from the State canals or their feeders, but it is provided that no cemetery shall be located in any city, without the consent of the common council, or incorporated village, without the consent of its trustees (sec. 45, as amended in 1896).

By laws of 1852, Ch. 280, secs. 3, 4 and 5 as amended by Laws of 1854, Ch. 238, Laws of 1871, Ch. 164, Laws of 1877, Ch. 156, Laws of 1889, Ch. 389, and Laws of 1897, Ch. 129, it is provided that rural cemetery corporations, incorporated under the General Act of 1847, Ch. 133, should not acquire lands by deed or otherwise in Westchester, Kings, Queens, Rock-

land, or Suffolk counties, without the consent of the supervisors, which may be granted on conditions; nor should it be lawful for any person or incorporation not incorporated under said act to take as aforesaid, or set apart or use any land or ground in either of said counties for cemetery purposes without such consent as aforesaid.

The foregoing act as so amended was not repealed by the Membership Corporation Law, as it relates to individuals as well as corporations. It will be observed that, as to corporations, the amending act of 1897 is inconsistent with sec. 42 of the Membership Corporation Law, as the former law does not limit the amount of land which may be acquired, whereas the latter provides that not more than two hundred and fifty acres of land shall be taken, and the former includes Suffolk county, but does not include Erie county, whereas the latter embraces the latter county, but omits Suffolk county.

By Laws of 1869, Ch. 727, as amended by Laws of 1870, Ch. 760, Laws of 1873, Ch. 452, Laws 1875, Ch. 206, and Laws 1898, Ch. 543, it is provided that cities and villages may ac-



quire by deed, devise, or otherwise, or by exercise of the right of eminent domain lands, or additional lands, for burial purposes and that lots in such cemeteries shall be held indivisible, and shall descend to the heirs-at-law or devisees of the proprietor subject to the limitations and conditions mentioned in the Act.

The amending laws of 1870, 1873, and 1875, also extended this privilege to incorporated cemetery associations, but these acts, to that extent, have been for the reasons already stated, declared unconstitutional (*Matter of Deansville Cemetery Association*, 66 N. Y. 569).

By Laws of 1875, Ch. 482, secs. 22, 23, 24, and sec. 30, subd. 6, it is provided that boards of supervisors of counties whose boundaries were not coterminous with cities may authorize cemetery corporations owning or controlling lands outside cities, to acquire, by purchase or otherwise, additional lands for cemetery purposes, and to authorize towns and villages to enlarge and improve cemeteries owned by them.

This act was repealed by the County Law (Laws 1892, Ch. 686).

It is provided by the General Village Laws of New York, Ch. 414, 1897, Art. II, sec. 290,

that the board of cemetery commissioners of a village may acquire by condemnation in the manner pointed out in the section, lands for a cemetery, within the village, or within three miles of its boundaries. All lands so acquired shall be part of the village territory.

CONVEYANCE.—Lands may also be acquired for cemetery purposes by deed, and when the conveyance especially declares that the premises are to be used for cemetery purposes and for no other purpose, neither the parties to the deed or their heirs, or the lot holders, can divert it from those uses, even though a valuable consideration has been paid (*Reed v. Stouffer*, 56 Md. 236).

A grant of lands to church societies for the purposes of a church and church yard and burying place, and for no other purpose, must be accepted on the terms on which it was given, or relinquished; it cannot be altered by any new agreement between the donor and donees, or converted to any other purpose. And even if the church has been abandoned, and the grantee societies dissolved, the use as to the burying ground must still be continued to those who had or have relatives buried there, and on the

failure of such use, the lands must revert to the grantor's heirs (Appeal of Gumbert, 110 Pa. St. 496).

When, however, lands were conveyed "for a place of burial and other purposes," and there were no words indicating that the grant was to be void, and the property to revert to grantor if the expressed purpose was not carried out, the grantee took title in fee simple, and there was no reversion, even although the use of the lands for cemetery purposes was discontinued, and the grantee removed the bodies, divided the land into lots, and sold same. (Methodist Protestant Church of Cincinnati v. Laws, 7 Ohio C. C. 211.)

In Pennsylvania if lands are conveyed to trustees of a religious congregation for the benefit of its poor, for the purpose of erecting a church, and for a burial ground, the lands become legally vested in the congregation as absolute owner, and the land, being entirely its own, it may sell or mortgage it when and to whom it pleases (Brendell v. German Reformed Corporation, 33 Pa. St. 415).

When land is sold for cemetery purposes and the agreement is wholly executory, the grantee

agreeing to pay a certain sum to grantor on the sale of each lot, the title does not pass to the association until the lands are sold for cemetery purposes (*Bennett v. Culver*, 97 N. Y. 250). Such an agreement does not violate the constitutional provisions against feudal tenures, etc., Art. I, Const. 1847, secs. 12-15 (*Bennett v. Washington Cemetery*, 24 Abb. N. C. 459). When the agreement is that no lot shall be sold for less than \$80, out of which the grantor is to be paid \$40, the latter is entitled to be paid that sum even though a lot is sold for less than \$80 (Same case, 24 Abb. N. C. 459), but a provision to pay \$3 for each grave opening, is only applicable where single graves were sold, and did not include grave openings on lots sold (Same case, 24 Abb. N. C. 459; 47 App Div. 365).

The Membership Corporation Law, as amended in 1896, provides, sec. 45, for the acquisition, other than by condemnation, of land for cemetery purposes, not exceeding two hundred acres, by a cemetery corporation, the land to be situated wholly or partly within the county within which its certificate of corporation is recorded (save that as to lands in Kings,

Queens, Rockland and Westchester, the consent of the board of supervisors must first be obtained—sec. 42), and also of land for cemetery purposes necessary to supply water, and the right to lay pipes, etc., and divert waters, except canal waters, or streams feeding same, and may also acquire other than by condemnation, additional real property not exceeding in value two hundred thousand dollars, for the purposes of the convenient transaction of its general business, no portion of which shall be used for the purpose of a cemetery. It is also provided that a cemetery corporation may acquire, otherwise than by condemnation, additional real or personal property, absolutely, or in trust, in perpetuity or otherwise, for the improvement or embellishment, but not the enlargement, of its cemetery. It is also provided that a cemetery corporation may accept a conveyance of real property held by a religious corporation for burial purposes, or by trustees, for such purposes, subject to the trusts to which grantor's title was subject. Lots previously sold in any such lands and grants for burial purposes therein previously made, shall not be affected by any such conveyance; nor shall any grave, monument, etc.,

be disturbed, or remains removed without the consent of the lot owner or the heirs of the person buried therein. It is further provided that no cemetery shall hereafter be located in any city or incorporated village without the consent of the common council of such city, or the board of trustees of such village. Provision is also made by the 46th sec. for surveying and mapping of the cemetery premises.

By section 57 provision is made for the dedication by deed or devise of land not exceeding three acres for a family cemetery, not to be located within one hundred rods of a dwelling house without the consent of the owner. The instrument shall describe the land, may appoint directors to manage such cemetery, direct the manner of choosing successors to the directors, and may grant to such directors money or personal property, to be a fund for improving such cemetery, such fund when created by will not to exceed ten per cent. of testator's estate in excess of his debts.

The directors are to give bond to the surrogate of the county in which the lands are situate, and to file an account of receipts and expenditures with him once a year. Provision is also



made by sec. 63 for the conveyance to a cemetery corporation to be incorporated under the provisions of secs. 61, 62 and 63, of cemetery lands formerly belonging to such corporation prior to its incorporation, the title to which had vested in the town pursuant to sec. 195 of the Town Law, or Rev. Stat. Part 1, Ch. 11, tit. 7, sec. 1. The conveyance to be made by the supervisor of the town to the directors of such corporation.

It is provided by sec. 50 that half the proceeds of the sale of the use of lots in a cemetery shall be applied to the payment of the purchase money of the real property acquired by the corporation until such purchase money shall be paid, and the residue in improving and embellishing the cemetery, and the avenues and roads leading thereto, and to defraying the incidental expenses of the corporation, and after the payment of the purchase money, and the expense of surveying and laying out the cemetery, the proceeds of sales of lots should be only applied to the embellishment of the cemetery, and the incidental expenses of the corporation. Such corporation may agree with a person from whom lands are purchased to pay therefor a specified

share not exceeding one-half of the proceeds of all sales of the use of lots and plats from such land, and such share shall be first applied to the payment of such purchase money, and the residue thereof shall be applied to the preservation and embellishment of the cemetery, and the incidental expenses of the corporation. When lands have been so purchased, and are to be paid for as thus provided, the prices of the lots shall not be changed whilst the purchase money remains unpaid without the written consent of a majority in interest of the persons from whom the lands were purchased, their heirs, representatives or assigns.

It was held in *Palmer v. Cypress Hill Cemetery*, 122 N. Y. 429; aff'g 47 Hun, 636, that although the sale of four hundred lots by a cemetery association to its superintendent to be by him resold, might be *ultra vires*, as it might deny to the association the power to regulate the conditions of the sales as provided by sec. 7 of Act of 1847, of which sec. 50 is a re-enactment, yet as the validity of the contract was admitted by the defendant, which was willing to perform it, on payment of the purchase money, the ques-



tion as to its corporate power to make the contract could not arise.

Sec. 54 provides that if a cemetery corporation be indebted for lands purchased for cemetery purposes, or for services rendered or materials furnished in preserving or improving its cemetery, the directors, by a majority vote may, with the creditors' consent, issue certificates under the corporate seal, signed by the president and secretary, for the amount of such indebtedness or a part thereof, payable at such times and drawing such a rate of interest, and in such sums as may be agreed on with such creditors; but the amount of any certificate should not be less than one hundred dollars, nor the interest higher than the rate authorized by law. The certificate shall be transferable by delivery unless otherwise provided on the face thereof; and the directors shall keep in the corporation's books accounts of the number and amount of such certificates, the persons to whom issued, the time of maturity, and the rate of interest. The directors shall set aside from the proceeds of sales of the use of lots such sums as they may deem necessary to pay said certificates at their

maturity. Until such certificates are paid each holder thereof shall be entitled, at all meetings of the corporation, to one vote for each one hundred dollars of such indebtedness held by him. Such certificates shall not be a lien on a lot belonging to a lot owner.

It was held in *Thacher v. Hope Cemetery Association*, 126 N. Y. 507, that if a certificate holder allows more than ten years to elapse from the time when sufficient money had been received by the defendant cemetery association from the sales of lots to pay the whole amount due according to the terms of the certificate, before commencing action to recover same, he is barred by the statute of limitations.

Bonds issued by a cemetery association incorporated under the Act of 1847, as amended in 1860, in payment for the cemetery lands and for improving it, have been held to be valid. *Seymour v. Spring Forest Cemetery Association*, 19 N. Y. Sup. 94; *aff'd* 144 N. Y. 333. Sec. 54 is a substantial re-enactment of the provisions of the Act of 1860, Ch. 163, secs. 1-4.

Sec. 55 provides that if a cemetery corporation incorporated under a law repealed by the Membership Corporation Law, has converted its

indebtedness into stock certificates, in pursuance of law, interest shall not be paid to such stockholders, but they shall be entitled to dividends thereon for their proportional part of the net receipts of the corporation, and if such shall have been fixed by agreement at the time of the issue of stock, then they shall receive the agreed dividends. Such certificates shall be only transferred on the association's books, and each holder shall be entitled to one vote for every share of stock. A register shall be kept of the issue of stock. A director may hold stock for his own benefit. No such stock shall be a lien on the lot of a lot holder; and no other or greater liability of the corporation issuing such stock shall be created or deemed to exist than may be necessary to enforce the faithful application of the surplus or net receipts of the corporation to and among the holders of the stock in the manner hereinbefore specified. A cemetery which has heretofore issued such certificates of stock is a membership corporation, and not a stock corporation.

Lands may be also acquired by deed or devise in Kings, Queens, Rockland, Westchester, Suffolk or Erie counties, for cemetery purposes (Membership Corporation Law, sec. 42,

as amended in 1896, and Laws 1852, Ch. 280, as amended in 1897), and by cities and villages (Laws 1869, Ch. 727, and amendments), and supervisors of certain counties might authorize cemetery corporations to acquire by purchase additional lands for cemetery purposes, and authorize towns and villages to enlarge and improve cemeteries owned by them. Laws 1875, Ch. 482, repealed by the County Law in 1892.

It is provided by the Town Law, Laws 1890, Ch. 569, sec. 193, as amended in 1898, that three persons may be chosen at an annual town meeting to act as a board of trustees of burial grounds belonging to the town, within its limits, and that the supervisor may convey same and any additional lands to be acquired, to such trustees, who shall hold office for two years, and be a corporation capable of accepting gifts and bequests of personal property for the improvement of the cemeteries or lots therein.

Sec. 194 provides for the laying out of lots; the filing of a plat in the county clerk's office; the setting aside of lots for free interment of indigent persons, and for the conveyance of lots, and for the expenditure of the purchase monies on the improvement of the grounds.

Sec. 195 (as amended by Ch. 386 of the Laws of 1901) provides that the title to every burying ground in the town, which shall have been so used for fourteen years, shall be deemed to be vested in such town, and subject to its government. In any town in which trustees have not been chosen as provided by sec. 193, the town board may adopt regulations for the proper care of cemeteries therein. If a cemetery is not used for burial purposes, provision is made for the care of same by the commissioners of highways.

And sec. 3 provides that on the alteration of the boundaries of a town, no town cemetery, or burial ground shall be sold or divided, but the same shall belong to the town within which it may be situated after a division of the town shall be made.

And by secs. 196 and 197 (added by Laws of 1901, Ch. 320) the rights and powers given by sec. 193, and Ch. 46 of Laws of 1873, over the cemeteries of a town which shall consolidate with a city, village or other town, are given to the latter.

The Village Law also provides (Laws 1897, Ch. 414, sec. 290) for the acquisition by pur-



chase, or by gift, grant or devise, of lands within the village or within three miles of its boundaries for cemetery purposes.

And sec. 295 provides that the board of cemetery commissioners may take property given, devised or bequeathed in trust for the improvement of such cemetery or lots therein.

By the Religious Corporation Law (Ch. 723 of 1895, sec. 7) it is provided that a religious corporation may take and hold, by purchase, grant, gift or devise, real property for the purposes of a cemetery, or lots in a cemetery connected with it as may be conveyed or devised to it, with or without provisions therein, limiting interments to any particular class of persons, and may acquire in like manner property in trust for the improvement of the cemetery, or cemetery lots.

It may erect thereon a building for religious services for the burial of the dead, or for the use of employees, and may sell lots subject to such restrictions as may be imposed by the instrument of acquisition, or by its own rules, the conveyances to be signed, sealed, acknowledged and recorded in like manner, and with like effect as a deed of real property.

And by sec. 11 it is provided that lots, plats or burial permits in a cemetery owned by a religious corporation may be sold without leave of the court.

**PRESCRIPTION.**—An easement of the right to burial may be acquired by prescription, or long continued user of the land, and burial of the dead is the only possession, when claimed and known, necessary to ultimately create complete ownership of the easement so as to render it inheritable. And there cannot be an adverse possession by any other person whilst gravestones stand on the ground indicating previous burials (*Hook v. Joyce*, 94 Ky. 450).

**DEDICATION.**—Land may be dedicated to the use of a cemetery (*Mowry v. City of Providence*, 10 R. I. 52; *Hunter v. Trustees of Sandy Hill*, 6 Hill, N. Y. 407). It may be made without deed or other writing. It is not necessary that the owner should part with his title, and the effect of a dedication is not to deprive him of his title, but to prevent him, whilst the dedication continues, from asserting a right to possess the land dedicated. If, however, the cemetery or burial place should completely lose its identity as a burial ground, possession of the ground

may be reclaimed (Hunter v. Trustees of Sandy Hill, 6 Hill, N. Y. 407).

No particular form is necessary to constitute a dedication. Whether in fact there has been a dedication depends upon the intention of the original owner. Long usage, with the continued acquiescence of the original owner, is usually sufficient evidence of such a dedication (Schoonmaker v. The Ref. Prot. Dutch Church, 5 How. Prac. Rep. N. Y. 265). Dedication is, therefore, inferred from (1) the assent of the owner, and (2) the use of the land for the purposes of the dedication.

If the owner of a farm states to persons living near him that if a portion of the land were fenced off the land so fenced might be used as a burying ground, and the land is actually fenced off by the donor's neighbors, and it is exclusively used as a burying ground for fifty years, and many persons have been buried there free of charge, there is a dedication to the public generally, and not to those who helped to fence the yard, or who first appropriated lots therein (Pierce v. Spofford, 53 Ver. 394).

But where there are circumstances which rebut the presumption of an intention to dedicate



arising from long usage, there is in fact no dedication. When it appeared that a church corporation was the owner in fee of a burying ground, and that no burials had ever been made there without its consent, it was held that although a great number of plaintiff's relatives were buried there, a mere license only was conferred which did not secure any interest in the land, and that plaintiff could not restrain the corporation from erecting a church edifice over the graves of plaintiff's relatives, the corporation undertaking not to disturb the remains of the dead, and to preserve the grave stones (*Schoonmaker v. Ref. Prot. Dutch Church*, 5 Hun, Pr. Rep. 265).

## CHAPTER V.

## GOVERNMENT AND MANAGEMENT OF CEMETERIES.

Cemeteries incorporated under special acts are governed thereby, and by the by-laws, rules and regulations which they are empowered to make thereunder.

When by a special act (Ch. 196 of 1853) the trustees of two church corporations were constituted a joint board of trustees of a corporation called the Union Cemetery, created by the Act, and by a subsequent act one of such church corporations was authorized to release all its interest in the cemetery to the other, and by a further act the successor church corporation was authorized to sell the cemetery, it was held that one of the two church corporations to whom the other had released, was liable for the breach of a written contract by which plaintiff was employed as superintendent of the cemetery

(Cocheu v. Methodist Protestant Church, 32 App. Div. 239).

Cemeteries incorporated under general laws are governed by their provisions, and by the by-laws, rules and regulations which they are empowered to make thereunder. But such by-laws must be reasonable (Rosehill Cemetery Co. v. Hopkinson, 114 Ill. 209).

Membership corporations created under special laws may now also avail themselves of the provisions of the general laws, thus obviating the necessity of frequent applications for special legislation. See report of revision commissioners.

CEMETERY CORPORATIONS.—A cemetery corporation organized under the Membership Corporation Law is governed by the provisions of the General Corporation Law, and Acts 1 and 3 of the Membership Corporation Law, but if there is a conflict between their provisions, the latter must prevail. Sec. 33, General Corporation Law; sec. 3, Art. 1 Membership Corporation Law.

By the Membership Corporation Law, sec. 43, it is provided that public notice of each an-

nual meeting of a cemetery corporation shall be given in a manner to be prescribed by its by-laws. Each person of full age owning a lot or plot, or part of either, containing at least ninety-six square feet of land in the cemetery of the corporation, or if there be two or more owners of such lot, then one of them designated by a majority of such joint owners to represent such lot or plat, may cast one vote for each such lot or plat or part of either, so owned, at the meetings of the corporation. Each owner of a certificate of stock theretofore lawfully issued, and each owner of a certificate of indebtedness of a cemetery corporation, may vote at the meetings of the corporation. Each owner of stock theretofore lawfully issued shall be entitled to one vote for each share of stock owned by him, at the meetings of the corporation. Each owner of a certificate of indebtedness of a cemetery corporation shall be entitled to one vote at such meetings for each one hundred dollars of such indebtedness.

By sec. 44 (as amended by Laws of 1901, Ch. 415) the directors of a cemetery corporation shall be elected at its annual meeting by ballot, by the persons entitled to vote thereat. If at

any such meeting one-fifth of the owners of lots or plats shall not in person or by proxy, vote thereat, the directors shall be chosen by the existing directors, or a majority of them, unless such directors shall, at such meeting, be chosen by a majority of the votes of the owners of certificates of stock or indebtedness. The term of office of a director shall be three years. Provision is made for the filling of a vacancy in the office of director until next annual meeting. After the first annual meeting no one but a lot owner shall be eligible to the office of director. Provision is also made for increasing or diminishing the number of directors, and for their election when the annual meeting shall not be held on the day mentioned in the certificate.

Sec. 47 provides for the making of reasonable rules and regulations for the care and management of the property of the corporation, and that the directors may recover a penalty not exceeding \$25 for a violation of such rule in a civil action.

It has been held that the provision of this section inflicting a penalty is not applicable to persons who are not members of a cemetery corporation, and accordingly when a non-mem-

ber performed work upon a lot in a cemetery without the consent of the superintendent, notwithstanding a rule to the contrary, it was held that the statutory penalty of \$25 could not be recovered in a civil action, and the association must be relegated to its common law remedy against the defendant as a trespasser (*Johnstown Cemetery Association v. Parker*, 45 App. Div. 55, affirming s. c. 28 Misc. R. 280), and it was held by the Supreme Court in that case that when a lot owner has the entire estate in his lot by deed subject to the rules annexed thereto, one of which is that he may cultivate trees, shrubs and plants, he has the right to employ one to cut the grass and remove weeds from the lot, provided it is done within proper hours, and that no reasonable regulation of the cemetery is violated.

A cemetery corporation must, under a provision of sec. 47 (for regulating the introduction and care of plants, trees and shrubs within such grounds), use reasonable care not to permit the introduction of anything noxious into the lots, but in the absence of an agreement as to special care of a lot, it is not liable for injury to a



woman occasioned by poison ivy, whilst she was engaged planting flowers on her husband's grave, especially when the association had no actual or constructive notice that such poison ivy was upon the grave (*George v. Cypress Hills Cemetery*, 32 App. Div. 281).

Section 48 provides for the keeping of a record of burials.

By sec. 49, the directors must fix the prices of burial lots, and keep a plain printed copy of the schedule of such prices publicly posted in the offices of the corporation, for public inspection.

Section 52 provides for the raising by taxation of the lot owners of moneys for the improvement of the cemetery when its own funds are insufficient.

RELIGIOUS CORPORATIONS.—A religious corporation subject to the provisions of the Religious Corporations Law is governed by the General Corporation Law, as well as by the provisions of Art. I of the Religious Corporations Law and such other articles of the latter law as is specially applicable to it, but the provisions



of the Religious Corporations Law, if in conflict with the General Corporation Law, must prevail. (General Corporation Law, sec. 33.)

Section 8 of Art. I of the Religious Corporations Law provides that a religious corporation may, notwithstanding the restrictions contained in any conveyance or devise to it, remove the human remains in a cemetery owned by it to another cemetery owned by it if the trustees thereof so determine, and if either three-fourths of the members of such corporation, qualified to vote at its corporate meetings, sign and acknowledge and cause to be recorded in the office of the clerk of the county in which such cemetery, or a part thereof, is situated, a written consent thereto, or if three-fourths of the members of such corporation, qualified to vote and present and voting, at a corporate meeting of such corporation specially called for that purpose, shall approve thereof. But if such corporation be a church, previous notice of the object of such meeting shall be published for at least four consecutive weeks in a newspaper of the town, village or city in which the cemetery from which the removal is proposed, is situated, or if no newspaper is

published therein, then in a newspaper designated by the county judge of such county. Such removal shall be made in an appropriate manner, and in accordance with such directions as to the manner thereof as may be given by the board of health of the town, village or city in which the cemetery from which the removal is made is situated. All tombstones, monuments, or other erections at or upon any grave from which any remains are removed shall be properly replaced or raised at the grave where the remains are reinterred.

CEMETERIES IN VILLAGES.—Section 42 of the Village Law provides that a cemetery commissioner must be the owner of property assessed upon the last preceding assessment roll of the village, while he holds office, and sec. 66 provides for the establishment of a separate board of cemetery commissioners, or a municipal board, with the powers of such, combined with a board of fire, water, etc., commissioners, and sec. 70 provides for the abolition of a separate board of cemetery commissioners.

Cemetery commissioners must serve without compensation (sec. 85); may take testimony in

a proceeding before them (sec. 316): and violations of their ordinances may be punished by the trustees (sec. 89, subd. 20).

Section 101, subd. 5, provides for a cemetery fund, consisting of moneys raised by taxation for the purchase, etc., of cemeteries, proceeds sale of lots, and penalties for violations of ordinances.

Section 128 provides for the issue of bonds to construct and maintain cemeteries.

Section 291 provides for the division of cemeteries into lots, and for the conveyance thereof to individuals for the sole purpose of interment, and the keeping of a record of sales and of conveyances.

Section 292 provides that the board of cemetery commissioners may make reasonable ordinances for the care of the cemetery grounds, etc., as set forth in the section.

Section 293 provides for the interment of strangers.

Section 294 requires the cemetery commissioners to keep a record of interments, and sec. 296 provides for the making of an annual report.

CEMETERIES IN TOWNS.—Section 21 of the Town Law provides for the creation of a board of trustees of cemeteries in the town belonging to it, and sec. 22 provides for the laying out of burial lots by the trustees, and for the recording of a plot—the interment of indigent persons—the conveyance of burial lots and expenditure of the proceeds in improving the grounds. By Laws of 1854, ch. 112, sec. 11, amended by Laws of 1893, ch. 59, it is provided that the supervisor of a town may remove bodies in a private cemetery in the town to any other cemetery in the town with the consent of the owners and of the next of kin of the deceased in the State, and, as further amended by Laws 1897, ch. 463, it is provided that private cemetery owners may remove interred bodies to any other cemetery in the town, or to some cemetery designated by deceased's next of kin, notice to be given to such next of kin, if known, within ten days of removal.

CEMETERIES IN COUNTIES.—By Laws of 1875, ch. 482 (secs. 22, 23, 24, and sec. 30, subd. 6), it is provided that boards of super-

visors of counties whose boundaries were not co-terminous with cities, might authorize cemetery corporations owning lands outside cities to sell lands not needed for cemetery purposes, and to use proceeds of sale in purchasing other lands and improving their cemeteries, and to authorize towns and villages to remove bodies to proper cemetery grounds on thirty days' notice; and for the removal of headstones, etc.; to authorize towns, villages, societies or associations to sell such abandoned cemeteries and appropriate proceeds to pay expenses and repurchase other cemetery grounds; that lands sold should be no longer exempt from taxation, and that laws conflicting with the exercise of such powers should be deemed inoperative.

This law was repealed in 1892 by the County Law.

The Poor Law (ch. 225 of 1896), sec. 83, provides that the board of supervisors in each county shall designate some proper person who shall cause to be interred the bodies of honorably discharged soldiers, sailors or marines who shall die without leaving sufficient means to defray funeral expenses, and sec. 84 provides for

the erection of headstones on the graves of those so buried.

CEMETERIES IN CERTAIN COUNTIES.—By Laws of 1852, ch. 280, as amended by various laws, the latest of which is Laws of 1897, ch. 129, the supervisors of Kings, Queens, Westchester, Rockland and Suffolk counties may make regulations as to burials in any cemetery in these counties as public health and decency may require.

Laws 1877, ch. 472, provides for the registration of all lots, except those held and designated for family burial purposes, in any cemetery in Kings and Queens counties, organized under the general Rural Cemeteries Law of 1847, ch. 133, by the cemetery associations in books to be provided for the purpose—and for the registration of the transfer of cemetery lots at the office of the cemetery association, that lots not held for family purposes might be taxed, the moneys realized to be used in improving the cemetery grounds, etc., and that deeds need not be furnished to any person in arrears in the payment of such tax.



## CHAPTER VI.

SALE, MORTGAGE OR LEASE OF CEMETERY  
PROPERTY.

The laws applicable to the sale, mortgage or lease of cemetery property are set forth in this chapter.

GENERAL LAW APPLICABLE TO ALL CEMETERIES.—By Laws 1871, ch. 419, it is provided that the Supreme Court may authorize the trustees of burial grounds or rural cemetery associations to sell any unoccupied real estate held by them, and to apply the proceeds as shall be most for their interests; but no lands in which interments had been made should be sold, and no real estate of any rural cemetery or rural cemetery association should be sold otherwise than in pursuance of their acts of incorporation, nor for any other than cemetery purposes, except as provided by the act, and all acts and



parts of acts inconsistent with the act were thereby repealed.

This act would appear to apply to cemetery corporations, and also to religious corporations and municipalities.

CEMETERY CORPORATIONS.—A cemetery corporation created under the Membership Corporation Law, or laws repealed thereby, may, by Art. I, sec. 13, to a limited extent, sell, mortgage or lease its real property, with leave of the court. It is provided by the second paragraph of that section that "Except as otherwise provided by this chapter, no portion of a cemetery or a cemetery corporation which any person other than the corporation is obliged to use for burial purposes, or in which burials have been made, and not lawfully removed, shall be sold, mortgaged or leased by the corporation."

The exception referred to is in the first paragraph of sec. 13, which provides that no sale, mortgage or lease of real property shall be made unless ordered by a vote of two-thirds of the directors, or a majority, if the directors are not less than twenty-one in number. No real property shall be leased without leave of the court,

for more than five years, or sold or mortgaged. A mortgage may be issued to secure the payment of bonds issued or to be issued to different persons. The court may grant leave to a membership corporation to convey real property without consideration to another like membership corporation. A mortgage without leave of the court may be confirmed by the court, and will be valid, except as to subsequent purchasers or incumbrancers.

The proceedings for leave to sell are had under Code Civ. Proc. secs. 3390-7.

If its by-laws so provide, a portion of its real property may, without leave of the court, be conveyed to a member for the erection of a cottage, etc.

Section 10 of the general Rural Cemetery Law of 1847, ch. 133, has not been repealed. It provides that the cemetery lands of any association formed pursuant to the act, and any property held in trust by it under sec. 9 of said Act of 1847, shall not be liable to be sold on execution, or be applied in payment of debts due from any individual proprietor, but that latter and his heirs and devisees should hold the same

exempt therefrom as long as the same should remain dedicated to the purposes of a cemetery.

CEMETERIES OTHER THAN RURAL CEMETERIES.—By Laws of 1879, ch. 310, it is provided that it shall not be lawful to mortgage land actually used for cemetery purposes, or to apply it in payment of debts so long as it should be continued to be used for such purposes, and that when such use should cease, a judgment which but for the provisions of the act might be collected, might, with interest, be collected thereout, and that the provisions of the act should not apply to the city of Rochester.

This act does not apply to cemeteries incorporated under the General Act of 1847 (*People v. Pratt*, 127 N. Y. 75), and as that act has been substantially re-enacted in the Membership Corporation Law, would not be applicable to cemeteries incorporated under the latter law.

RELIGIOUS CORPORATIONS.—A religious corporation shall not sell or mortgage any of its real property without leave of the court. Sec. 11 of Art. I of the Religious Corporations Law, as

amended by Laws of 1901, ch. 222. The trustees of an incorporated Protestant Episcopal church shall not vote for the sale, mortgage or lease of its real property, unless the rector, if it then has a rector, be present, and shall not apply to the court for leave to sell or mortgage any of its real property which has been consecrated, or which is used for regular religious services by the congregation of such church, and the consent of the bishop and standing committee must be obtained, as must also the consent of the archbishop or bishop of the diocese, or of the vicar-general, or administrator in the case of incorporated Roman Catholic churches, and the petition must set forth that this section has been complied with.

It is provided, however, that no cemetery lands of a religious corporation shall be mortgaged while used for cemetery purposes.

The Code of Civil Proc. secs. 3390-7, provides for the procedure on application for leave to sell.

PRIVATE AND FAMILY CEMETERIES.—The Laws of 1847, ch. 85, provided that lands set apart and a portion of which have been used for a family or private burying ground, shall not be

subject to levy and sale by any execution, or other legal process whatsoever, and that such exemption should not extend to more than one-fourth of an acre of land, nor to any building or erection, other than a vault, etc., for the dead, and that no land should be so exempt, unless the owner, before such sale, filed with the clerk of the county in which the land was situate, a description of the land, made, certified and acknowledged as deeds are, and said clerk shall have recorded same in the proper book for recording deeds.

This act has been repealed, and it is now provided by the Code of Civil Proc. sec. 1395 that land set apart as a family or private burying ground, and heretofore designated as prescribed by law, in order to exempt the same, or hereafter designated for that purpose, as prescribed in the next section, is exempt from sale by virtue of an execution, upon the following conditions only:

1. A portion of it must have been actually used for that purpose.
2. It must not exceed in extent one-fourth of an acre.
3. It must not contain, at the time of its designation, or at any time afterwards, any build-

ing or structure, except one or more vaults, or other places of deposit for the dead, or mortuary monuments.

And sec. 1396 provides that in order to designate such land to be exempt, a notice containing a full description thereof, and stating that it has been set apart for a family or private burying ground, must be subscribed by the owner, and acknowledged, or proved and certified in, like manner as a deed to be recorded in the county where the land is situate, and recorded in the office of the clerk or register of that county at least three days before the sale of the land by virtue of the execution.

It is within the discretion of the legislature to permit a cemetery association incorporated under special act to sell the cemetery land with the bodies still in the ground, provision having been made for their proper removal to another place of interment. If a deed is made, prior to removal, it is made subject to the lot owners' easement, which could be only extinguished by the removal of the bodies. The right to make use of the land is restrained until all easements are extinguished, but this does not prevent the possessing of title subject thereto (Angel v.



Methodist Protestant Church, 47 App. Div. 459). And a statute *authorizing* the association to remove the bodies, is equivalent to a mandate to remove them (same case, 463).

A statute of Minnesota provides that cemetery lands used for burial cannot be mortgaged (Wolford v. Crystal Lake Cem. Assn., 54 Minn. 440).



## CHAPTER VII.

## PROPERTY IN CEMETERY LOTS.

The interest which a lot owner acquires in his lot depends upon the act of incorporation, and the terms of the instrument under which title is obtained. In some cases a title in fee simple is taken (Brick Presbyterian Church, 3 Edw. Ch. N. Y. 155; Windt v. German Reformed Church, 4 Sand. Ch. 471; Com. v. Mount Moriah Cemetery Assoc., 10 Phila., Pa., 385), but in others an easement only is acquired, the title to the land remaining in the association (Buffalo City Cemetery v. Buffalo, 46 N. Y. 504; Went v. Methodist Protestant Church, 80 Hun, 270; Richards v. Northwest Protestant Dutch Church, 32 Barb. 42). When the exclusive right to burial in a lot is shown by twenty years user without objection, and gravestones were marked with the initials of defendant's family, and a memorandum of the sale of the lot was produced, it was held that a sale to defendant of the ex-

clusive right to use the lot for burial purposes was sufficiently shown (Conger v. Weyant, 28 N. Y. St. Rep. 745, aff'd 132 N. Y. 578), and no formal deed is necessary, as if to convey the fee; exclusive possession to bury in the lot is all that is needed (Conger v. Treadway, 25 N. Y. St. Rep. 774, aff'd 132 N. Y. 259).

When, however, a mere receipt is given, thus: "Received from John McGuire ten dollars, being the amount of purchase money of a grave two feet by eight in Calvary Cemetery, with privilege to erect a headstone thereon. D. Brennan, Supt. of Office of Calvary Cemetery"—it was held the right acquired was a mere license only, and revocable, and that no easement was conferred (McGuire v. St. Patrick's Cathedral, 54 Hun, 207).

And it was held in Matter of O'Rourke, 12 Misc. Rep. 248, that the claim of a religious corporation against a decedent's estate for the balance of the price of a lot purchased by him, could not be sustained, as no deed was given, as required by the Act of 1881, ch. 501 (re-enacted in sec. 7 of the Religious Corporations Law), and that the interment of the deceased's remains therein was not a part performance so as

to prevent the operation of the Statute of Frauds.

But whether the lot holder acquires an absolute fee simple, an easement, or a mere license, he does so subject to the right of the cemetery association to change its location and to remove the bodies interred to a new location when circumstances require it (*Went v. Methodist Protestant Church*, 80 Hun, 271, 11 Abb. Pr. 30; *Matter of Board of Street Opening*, 62 Hun, 499, aff'd 133 N. Y. 329), and if a city passes a by-law pursuant to statutory authority prohibiting the interment of dead bodies within certain parts of the city, such a by-law is operative (*Coates v. New York*, 7 Cow. 585). If a church society has been dissolved, persons who have relatives buried in the churchyard may nevertheless continue to make interments therein, even though the church has been abandoned (*Gumbert's Appeal*, 110 Pa. St. 496).

One who takes a lot in a Catholic cemetery, does so subject to the rules of the Catholic Church, and he has no right to inter therein the body of a person who has not died in communion with that church, and accordingly the interment of a suicide in such a cemetery will be

restrained by injunction (*Dwenger v. Geary*, 113 Ind. 114), nor will a mandamus issue to compel the interment of one who died a Freemason (*People v. St. Patrick's Cathedral*, 21 Hun, 184), and the Catholic Church is the sole judge as to the right of burial (*McGuire v. St. Patrick's Cathedral*, 54 Hun, 207).

## CHAPTER VIII.

## TRANSFER OF CEMETERY LOTS.

When the special act incorporating a cemetery does not prohibit a sale or mortgage of his lot, a lot owner may convey his interest either absolutely or by way of security for a loan. So held in the case of *Lantz v. Buckingham*, 4 Low. 486, where a mortgage of a lot in Greenwood Cemetery, created under a special act (Laws 1838, ch. 297), was held valid. But in that case no interments had been made in the lot. And it was held subsequently that a mortgage of a lot in the same cemetery, after interments had been made therein, was void (*Thompson v. Hickey*, 59 How. Pr. Rep. 434). And where a man purchased a lot in that cemetery to be used as a place of burial for himself and his wife, and after several interments had been made therein, and the wife had greatly improved the lot at her own expense, it was held she could restrain a sale of the lot by her hus-

band (*Schroder v. Wanzor*, 36 Hun, 423). The court in that case said: "Good order, public decency and a just regard for the repose of the remains of the dead, require, under the facts of this case, that the judgment from which the appeal has been taken should be affirmed."

As to cemeteries to be acquired by villages under the Village Law, there is apparently no restriction as to alienation of lots, so long as they are used for burials only, as sec. 291 provides "for the conveyance thereof to individuals for the sole purpose of interments," and "that no sale, transfer, or assignment of such lot or any interest therein subsequently to the sale by the village shall be valid, unless by an instrument in writing, signed and duly acknowledged and recorded in the office of the village clerk."

The Town Law also provides (sec. 194) that the trustees shall "sell and convey" "burial lots on such terms as may be agreed on between the parties."

And the Religious Corporations Law provides (sec. 7) that a religious corporation "may sell and convey lots in such cemetery for burial purposes, subject to such conditions and restrictions as may be imposed by the instrument by which



the same was acquired, or by the rules and regulations adopted by such corporation," and it also provides for the recording of such conveyance with like effect as of a deed of real property.

The general Act of 1847, however, prohibited alienation of rural cemetery lots, after interments. And it is now provided by the Membership Corporation Law that as to rural cemeteries, other than those belonging to municipal or religious corporations, the use of lots therein for burial purposes shall, after an interment therein, be inalienable, except that heirs or joint owners may release to each other, and the lot may, if no burial be made therein, or the bodies be removed therefrom, be sold with the consent of the corporation, and a lot owner may convey or devise his lot to the corporation. (Membership Corporation Law, sec. 49.)

On the death of an owner of a lot in a cemetery owned by a city, or village, or a cemetery or religious corporation (Laws 1898, ch. 543, secs. 4-5), his title descends to his heirs at law or devisees. If, however, he leaves a widow and children, they shall have in common the possession of the lot during her life. If he leaves a widow and no children, she shall have possession



for life. If he leaves children, and no widow, they, or the survivor, shall have possession in common during the life of the survivor. The parties having such possession may erect a monument and make other permanent improvements thereon. The widow shall have the right of interment for her own body in such lot, or in a tomb in such lot, and a right to have her body remain permanently interred therein, except that her body may be removed therefrom to some other family lot or tomb with the consent of her heirs. When more than one person is entitled to the possession of the lot, the persons so entitled shall designate in writing to the clerk of the corporation which of their number shall represent the lot, and on failure to so designate, the corporation shall do so, and shall enter such designation of record. The widow may at any time release her right in such lot, but no conveyance or devise by any other person shall deprive her of such right.

It is further provided by the Membership Corporation Law, sec. 49 (which, however, only applies to cemetery corporations created thereunder, or by the acts thereby repealed), that lots shall be indivisible except with the consent of

the lot owner and the corporation, and on the death of the grantee shall descend to his heirs-at-law, or to such of them, or such persons as may be designated in the conveyance to the lot owner, and it is provided by sec. 51 thereof that a wife, husband, parent, or child of a person who has a burial lot may be interred therein without the consent of any person having an interest therein, subject to the following rules and exceptions:

1. The place of interment in such lot shall be subject to the reasonable determination of the cemetery corporation or association, or their officers or agent having immediate charge of interments. This act shall not permit the remains of a person not otherwise entitled to burial, to be interred in any ground or place, contrary to or in violation of the precept, regulations or rules or usage of any church or other religious society, association or corporation.

2. Any husband or wife living separate from the other, and having a burial lot in which the other (but for this act) would have no right of burial in such lot, and not desiring the remains of the other to be interred therein, may file a

written objection to such interment with the cemetery corporation or association, and if so filed at least thirty days before the death of the other, no right of interment shall be claimed or had under the foregoing section.

3. A parent or child, having a burial lot, in which the other would have no right of burial but for this act, and not desiring the remains of the other to be interred therein, may file a written objection to such interment with the cemetery corporation or association, and if so filed, at least thirty days before the death of the other, no right of interment shall be claimed or had by such other, under this section; provided that in such case, if the parent or child so excluded from burial in such lot, should die without having any place of interment provided, then the parent or child filing such objection shall at once furnish for the other a place of burial in some convenient cemetery; for the reasonable cost of which the estate of the deceased, if any, shall be responsible to the person furnishing such grave.

4. This section does not limit any existing rights of burial under other provisions of law. Nothing in this act contained, shall limit or

curtail the right of alienation by the owner of a burial lot, under the rules of the cemetery corporation or association wherein such lot is situated, before the death of the person for whose remains the right of burial is provided herein, and no right of burial shall accrue to any person by reason of this act in any burial lot sold by its owner, before the death of the person for whose remains the right of burial is provided herein. If there be more than one lot owner of a lot in the cemetery of a cemetery corporation, no body of a dead person shall be buried therein without the consent of all the owners of such lot, unless such person at the time of his death was an owner of the lot, or a relative, wife or husband of an owner, or a relative of such wife or husband. A dead body lawfully buried in a lot in such cemetery, may be removed therefrom, with the consent of the corporation, and the written consent of the owners of such lot, and of the surviving wife, husband, children, if of full age, and parents of the deceased. If the consent of any such person cannot be obtained, or if the corporation refuses its consent, the consent of the County Court of the county, or the Supreme Court,

at a special term held in the district, where the cemetery is situated, shall be sufficient. Notice of the application for the consent of the court, must be given at least eight days prior thereto, personally, or at least sixteen days prior thereto, by mail, to the corporation, or to the person not consenting, and to every other person on whom service of notice may be required by the court.

As a wife is not heir to her husband, or a husband to his wife, it may be desirable, when a husband or wife purchases a lot in a cemetery incorporated under a special act, or in an unincorporated cemetery not under municipal control, to which the laws cited are not applicable, and wishes to provide a right of burial for his or her surviving partner, to take the conveyance in the joint names of the husband and wife, as tenants in common. On the death of either, the survivor becomes entitled to an undivided half of the lot, and the heirs of the decedent to the other half. Or, if the conveyance be made to the husband only, it may provide for the interment of the wife therein, and, if to the wife only, similar provision may be made for the interment of the husband.



If one wishes to provide for parents, the conveyance might (except as to lots in a cemetery association in which the burial of parents is provided for) direct that the parents of the proprietor be interred therein. This is the more desirable as, even if parents may, in the absence of descendants, inherit, they, in certain events, under the Real Property Law, secs. 284-5, will take only a life interest in the lot. Or, the conveyance may be taken in the joint names of the purchaser and the parents, as tenants in common, in which case an interest in the land will descend to the heirs of the parents.

It has not yet been decided in New York State, whether a widow is entitled to dower in a lot belonging to her husband, or a husband to curtesy (or a life estate) in a lot belonging to his wife. The question can only arise when the title was held in fee simple. Under the statutes of Missouri (R. S. 1889, sec. 937) burial grounds cannot be subjected to claim for dower.

It is provided by sec. 53 of the Membership Corporation Law that whenever a person having a lot in a cemetery corporation shall vacate the same by a removal of all the dead buried



therein, and leave such lot in a broken and unimproved condition for one month or more, the corporation may grade, cut or otherwise change the surface, for the improvement of the lot, and the general improvement of the cemetery grounds, without reducing the area of the lot. The expense of such improvement, not exceeding ten dollars, shall be chargeable to such lot. If the owners of such lot, shall not, within six months after such expense has been incurred, repay such amount to the corporation, the latter may sell the lot at public auction on the cemetery grounds, previous notice of such sale having been posted at the main entrance of such cemetery, and mailed to the owners of such lot at their last known post-office address, at least ten days prior to the day of sale, and shall pay the surplus, if any, of the proceeds of such sale, over such amount, on demand, to the owners of such lot.

## CHAPTER IX.

## OPENING HIGHWAYS THROUGH CEMETERIES.

In the absence of an express prohibition, general statutes authorizing the taking of lands for the purposes of streets and roads, will authorize the laying out of streets and roads through private cemetery lands (*Matter of Board of Street Opening*, 62 Hun, 503, aff'd 133 N. Y. 329). In 1834 a portion of a cemetery belonging to Trinity Church was taken for the extension of Albany street. The land was taken under the authority of 2 R. L. of 1813, 408, sec. 107. Although the decision of the city of New York to appropriate the land in question was not expressly reviewed, the Supreme Court, in *Matter of Albany Street*, 11 Wend. 149, hinted that the city had such authority. Later, under the same law, a portion of the cemetery belonging to the Brick Presbyterian Church was taken for the extension of

Beekman street, New York City. (Matter of Board of Street Opening, 62 Hun, 504.)

And it has been held in Philadelphia, that the right to open a street through a cemetery in exercise of the right of eminent domain, was not abrogated, even though a special act of the legislature provided that no street should be opened through the cemetery lands. (*In re Twenty-second Street*, 102 Pa. St. 108.)

But in the case of a public cemetery, special authority must be expressly, or impliedly, given. (Matter of Board of Street Opening, 133 N. Y. 333; *Evergreen Cemetery Association v. New Haven*, 43 Conn. 234; *Wood v. Macon and Brunswick R. R. Co.*, 68 Ga. 539.)

By Laws of 1847, Ch. 133, sec. 10, as amended by Laws of 1877, Ch. 31, it is provided that during the time that cemetery lands should remain dedicated to the purposes of a cemetery, no street or road should be laid throughout the same, without the consent of the trustees, except by special permission of the legislature of the State.

The Highway Law (L. 1890, Ch. 568, sec. 1) provides that no private road, or highway, shall be laid out, or constructed, upon, or through,

any burying ground, unless the remains therein contained, are first carefully removed, and properly reinterred in some other burying ground, at the expense of the persons desiring such road or highway, and pursuant to an order of the County Court of the county in which the same is situated, obtained upon notice to such persons as the court may direct.

## CHAPTER X.

## TAXATION OF CEMETERIES.

Cemeteries were liable to taxation at common law.

But by sec. 10 of the general act as to rural cemeteries (Laws 1847, Ch. 133) they were declared exempt from "all public taxes, rates, and assessments."

It has been held, however, that this section does not apply to a city assessment for the construction of a sidewalk (*Buffalo City Cemetery v. City of Buffalo*, 46 N. Y. 506). The court in that case said: "That public taxes, rates and assessments are those which are levied and taken out of the property of the person assessed, for some public or general use or purpose, in which he has no direct, immediate and peculiar interest; being exactions from him, toward the expense of carrying on the general government, either directly, and in general, that of the whole commonwealth, or more immediately and par-

ticularly, through the intervention of municipal corporations; and that these charges and impositions which are laid directly upon the property in a circumscribed locality, to effect some work of local convenience, which in its results is of peculiar advantage and importance to the property especially assessed for the expense of it, are not public, but are local and private, so far as this statute is concerned."

And even when the plaintiff's charter exempted it from "all public taxes, rates and assessments," a cemetery association was nevertheless held liable for the expense of paving a street adjoining the cemetery (*Buffalo Cemetery Association v. City of Buffalo*, 43 Hun, 127, aff'd 118 N. Y. 61) inasmuch as the general act of 1879, Ch. 310, exempting cemeteries from sale on execution for tax or assessment, was held not to have repealed the local laws applicable to the city of Buffalo, making cemeteries liable for local assessments.

By the act of 1879, Ch. 310, referred to in the last cited case, it is provided that lands actually used for cemetery purposes should not be sold under execution, or for any tax or assessment, that no such tax should be levied, col-



lected or imposed; that when such lands should cease to be used for cemetery purposes, a tax or assessment which, but for the provisions of the act, might be levied or collected, may, with interest, be collected thereout, and exempting lands in the city of Rochester from its provisions.

The purpose of this act, was to secure to cemeteries not established under the act of 1847, exemption from taxation, and other immunities which they did not before possess. (*People v. Pratt*, 129 N. Y. 75.)

When a statute was enacted prior to the passage of the Rural Cemeteries Act, 1847, Ch. 133, empowering the trustees of St. Patrick's Cathedral, New York, to acquire lands in New York City, or any neighboring county, for cemetery purposes, lands thus acquired in Queens county, are exempt from taxation, notwithstanding amendments to the act of 1847, providing that the consent of the Board of Supervisors should first be obtained, before lands could be set apart for cemetery purposes in Queens county. (*People ex rel. Trustees St. Patrick's Cathedral v. Davren*, 16 N. Y. S. 794, *aff'd* 131 N. Y. 601.)

A cemetery organized under the general act

of 1847, is exempt from taxation, the moment its lands are acquired by the association, and will continue exempt whilst the association exists, although the city in which the cemetery is situated, has passed an ordinance forbidding further interments therein. In such a case, if the ordinance is not repealed, the cemetery should apply for a voluntary dissolution. On its failure to do so, the attorney-general can institute an action for the purpose. (People *ex rel.* Oak Hill Cemetery Association v. Pratt, 129 N. Y. 68; reversing same case, 14 N. Y. S. 551, 804.)

The property of a cemetery corporation is, by the tax law, exempted from taxation to a limited extent. Sec. 4, subsec. 7, provides: That the real property of a corporation organized exclusively for cemetery purposes, or for the religious, pious, charitable, educational, etc., -purposes mentioned in the act, and used exclusively for one or more of such purposes, and its personal property, shall be exempt from taxation, unless organized for profit, or its officers receive profit thereout, beyond reasonable compensation for their services. The real property shall be so exempt if not in actual use, if it is intended to construct buildings and improvements thereon, and

no profit is derived therefrom, but, otherwise, property not in actual use is liable to taxation, and the property of an officer of a religious denomination is exempt to the same extent as that held by a religious corporation.

And the property of a municipal corporation held for a public use, except a portion of such property not within the corporation, is by sec. 4, sub. 3, of the Tax Law (Laws of 1896, Ch. 908) also declared exempt from taxation.

## CHAPTER XI.

## DESECRATION OF CEMETERIES.

An action for damages, may be maintained by any person who has the fee to the soil, if entitled also to the possession, against one who digs and disturbs a grave therein (*Bessemer Land and Improvement Co. v. Jenkins* (Ala.), 18 So. Rep. 565). And, even when he possesses only an easement or license, "he acquires such a possession in the spot of ground in which the bodies are buried, as will entitle him to action against the owners of the fee or strangers who, without his consent, negligently or wantonly disturb it. This right of possession will continue as long as the cemetery continues to be used; but if for proper or legal reasons, it should be discontinued and the license withdrawn, and the bodies of the dead are to be removed, it must be done decently, only after due notice to the party entitled, if known, and such notice can be given." (Same case, p. 568.)

When the trespass is malicious the injured person is entitled to punitive damages (Smith v. Thompson, 55 Md. 5), and damages may be also given for injuries to the feelings, as in the case of the removal of the body of a child (Bessemer Land and Improvement Co. v. Jones, 18 So. Rep. 565), but in that case \$1,700 damages to the parents was considered excessive. But when a cemetery association, after selling a lot to plaintiff, and conveying it to him by deed, removed the body of plaintiff's child, which had been interred therein, without notice to plaintiff, and at the request of one to whom it had previously sold the lot, but who had not obtained a deed therefor, it was held that a verdict of \$1,150 damages was not excessive. (Thirkfield v. Mountain View Cemetery Association, 12 Utah, 76.)

A desecration of graves may be also restrained by injunction, and the action for trespass, or for an injunction, should (when the original proprietor is dead) be brought by his heir, and it is not necessary to aver his ancestor's intestacy. (Mitchell v. Thorne, 57 Hun, 405; aff'd 134 N. Y. 536; Matter of Brick Presbyterian Church, 3 Edw. Ch. N. Y. 155.) And the ac-

tion may be so maintained, although the title to the ground be in another (*Mitchell v. Thorne*, 134 N. Y. 539); but all of the heirs should join in the action, in order to recover damages; one or more, however, may by injunction prevent the interruption or destruction of their rights. (S. C. 542.)

The removal of bodies from a cemetery, which had been dedicated mainly for a burial ground, and also for school purposes, by a city, in order to adapt the entire lot for a school house, will be restrained, as, even if the city had shown proper legislative authority, which it did not do, it could only remove the bodies to some other burial place, and could not use the ground for school purposes. (*Jeffries v. City of Pittsburgh*, 26 Albany L. J. 203.)

The most effectual and the speediest remedy is by injunction. (Same case; and see also *Beattie v. Kurtz*, 2 Pet. 566.)

Trustees of a cemetery may maintain ejectment against a municipality which had been incorporated out of a township which included the cemetery, and which claimed exclusive control over it, disposing of burial rights, and managing



it as city property. (Board of Health v. East Saginaw, 45 Mich. 257.)

By the Penal Code, sec. 311, it is provided that any person who removes a dead body from a grave or vault, or place where it is awaiting burial, without authority of law, with intent to sell the same, or for purposes of dissection, or for the purpose of procuring a reward for the return of the same, or from malice or wantonness, is punishable by imprisonment not exceeding five years, or a fine not exceeding \$1,000, or both, and secs. 312-13 provide for the case of recovering stolen bodies, or opening graves, etc., without authority of law.

It is also a misdemeanor to arrest or attach a dead body, sec. 314, or disturb a funeral, sec. 315.

If a parent removes a body from a grave for the purpose of obtaining evidence as to malpractice, the statute is not violated. (Rhodes v. Brandt, 21 Hun, 1.)

The Penal Code, sec. 647, makes it a misdemeanor to wilfully injure a gravestone, monument, etc., or a shade tree or ornamental plant in a cemetery, or remove flowers, etc., therefrom,

and sec. 646, also makes it a misdemeanor to kill, wound, or trap any bird, deer, squirrel, rabbit, etc., in, or remove the young of such animal, or eggs of such bird, from a cemetery or public burying ground, or expose for sale, or knowingly sell, any bird, or animal, so killed, or taken.

## CHAPTER XII.

LIENS ON MONUMENTS, GRAVESTONES AND  
CEMETERY STRUCTURES.

Chap. 543 of the Laws of 1888, was the first New York statute giving such a lien. But it was declared unconstitutional in *Brooks v. Taintor*, 91 Hun, 338; 17 Mis. 534, in that it authorized the taking of property without due process of law, and it was repealed by the Lien Law, Ch. 418, of 1897.

Sec. 40 of the Lien Law provides that a person furnishing or placing in a cemetery or burial ground, a monument or other structure, has a lien for the price thereof, with interest, on filing a notice of lien with the superintendent.

Sec. 41 provides that such notice may be filed at any time after the completion of the work, but within one year after the agreed price becomes due, and must be signed by the lienor and verified, and contain the particulars specified in the section. The lienor shall within ten days

after the filing of such notice, serve a copy personally, or by mail, upon the person with whom the agreement was made, and upon the lot owner, if his name and residence can with reasonable diligence, be ascertained.

The notice must be served on the superintendent, within the year. The court has no power to extend the time beyond that period. (*Adler v. Lumley*, 46 App. Div. 229.)

Sec. 42 provides that thereafter an action to enforce the lien may be maintained, and that the judgment may authorize the removal of and sale of the monument to satisfy the amount of the judgment, and prescribes the procedure on such sale.

Sec. 43 provides for the disposition of the proceeds of sale.

Sec. 44 provides that the superintendent or other person in charge of a cemetery or burial ground, shall not permit the removal, alteration or inscription of a monument, etc., after service of notice of lien, except pursuant to the terms of a judgment to enforce such lien, nor shall he hinder the removal of such monument, etc., in pursuance of such a judgment.

## CHAPTER XIII.

## CEMETERIES AS NUISANCES.

When, owing to the growth of a city, a cemetery becomes a nuisance, and detrimental to the health of the citizens, further interments may be prohibited therein. And this, although the city has itself made a lease of the cemetery to the corporation, and covenanted for quiet enjoyment, as a city has no power to limit its legislative discretion by covenant. (Matter of Brick Presbyterian Church, 5 Cowen, 538.)

The legislature has power to prohibit interments in, or to remove the dead from, cemeteries which, in the advance of urban population, may be detrimental to the public health, or in danger of becoming so. (Windt v. German Reformed Church, 4 Sand. Ch. 471; Richards v. Prot. Dutch Church, 32 Barb. 42; Brick Church v. The Mayor, 5 Cow. 538; Coates v. The Mayor, 7 Cow. 585; Sohler v. Trinity Church, 109 Mass. 1; Woodlawn Cemetery v. Everett, 118

Mass. 354; Craig v. First Presbyterian Church, 88 Pa. St. 42; Went v. Methodist Prot. Church, 80 Hun, 266.)

The charters of cities usually provide for the making of city ordinances to regulate the burial of the dead. Under the power to regulate, the city may prohibit the burial of the dead within the city limits. (People v. Pratt, 129 N. Y. 68.)

By Laws of 1900, Ch. 703, it is provided that cities of the third class may prohibit further interments in any cemetery in such city, as detrimental to public health, and that the action of the city may be reviewed by certiorari.



## CHAPTER XIV.

## ABOLITION OF CEMETERIES.

When a cemetery completely loses its identity as a burial ground, it may be said to be abandoned. "When these graves shall have worn away; when they who now weep over them shall have found knidred resting places for themselves; when nothing shall remain to distinguish this spot from the common earth around, and it shall be wholly unknown as a grave yard; it may be that some one who can establish a good 'paper title' will have a right to its possession; for it will then have lost its identity as a burial ground, and, with that, all right founded on the dedication must necessarily become extinct." (Hunter v. Sandy Hill, 6 Hill, 412.)

When, however, a municipal corporation accepts, by deed, a plot of ground for the purpose of a burial ground, it cannot appropriate the burying ground, although for upwards of fifty years prior to the commencement of an action

to restrain the city from such an appropriation, all burials, except of new-born infants, had been prohibited therein, and although for upwards of forty years burials had been very infrequent. (*Rosseau v. The City of Troy*, 49 How. Pr. 492.)

And when, although an agreement from the original owner conveys the fee of lands for cemetery purposes, it appears it is executory, the grantees having agreed to pay \$40 for each lot of 400 square feet sold, and no lots having been sold, the grantee, a cemetery corporation, had no interest which could be taken in execution, and the heirs of the grantor may recover the lands from an execution creditor, although thirty years have elapsed from the grant. (*Bennett v. Culver*, 97 N. Y. 250.)

When a church corporation owns a cemetery in fee, and has not sold the lots therein, it may sell the cemetery lands, and cannot be restrained by injunction by persons, having relatives interred therein, from removing the remains of deceased persons to another cemetery. (*Windt v. German Reformed Church*, 4 Sand. Ch. R. 471.)

The Laws of 1895, Ch. 149, provide for the

dissolution of a rural cemetery corporation and sale of its land, upon proving, to the satisfaction of the Supreme Court of the district, that all bodies have, with the lot owners' consent, been decently removed, and that all parties consent, and that its debts have been paid.

The Laws of 1897, Ch. 538, also provide for the sale of land belonging to rural cemetery associations from which bodies have, with the consent of the former owners of the lots, been removed, upon proving to the satisfaction of the Supreme Court of the district that such bodies have been decently reinterred in some other cemetery; that the lots have been reconveyed to the cemetery association, and are not used for burial purposes; that burials have been prohibited; that all parties have consented, and that the association's debts have been paid.

## CHAPTER XV.

## UNDERTAKERS, EMBALMERS AND BURIALS.

*Undertakers.*

The word undertaker had its origin from the fact that the pioneers of the calling *undertook* to perform the entire duty of burial.

When an undertaker receives a dead body for safe keeping from those who are legally entitled to the right of burial, he will be held responsible in damages for allowing them to go out of his possession without the consent or authority of the parties who entrusted the remains to him. In 1884, in the city of Indianapolis, a husband and wife employed a firm of undertakers to take charge of their daughter's remains until such time as they might be ready to inter the same. A few months afterwards they notified the undertakers that they desired to have their child interred. The undertakers then discovered that the body had been shipped by mistake to some

point for interment, which they subsequently found to be in Ohio, and although they notified the plaintiffs and brought back the remains at their own expense, and delivered them to plaintiffs five days after the latter began action, they were, nevertheless, mulcted in several hundred dollars damages, the court holding that, independently of the contract between the parties, the right to the control and burial of the corpse was in the next of kin, in the absence of testamentary disposition, and not in the executor, and that in assessing the damages, the jury might consider the mental anguish suffered by plaintiffs. (*Renihan v. Wright*, 125 Ind. 536.)

It has been held in Massachusetts that a city board of health, under a statute authorizing it to make regulations concerning burial grounds and interments, may provide that no person except the superintendent of the cemetery, or a duly appointed undertaker, may remove a dead body from a house to a place of burial, under a penalty of not exceeding twenty dollars, and, on a complaint by the city, an undertaker, whose appointment had been revoked, was found guilty of unlawfully removing two dead bodies from a house in the city of Lawrence for the purpose

of burial. (Commonwealth v. Goodrich, 13 Allen, 546.)

By sec. 5, Art. 1, of the Public Health Law, Ch. 661, of 1893 (as amended by Laws of 1901, Ch. 29), provision is made for the registration of births, marriages and deaths in the State department of health, and that the commissioner of health shall prescribe rules, forms, etc., as to transfer permits by local boards of health for the transportation of corpses for burial outside the county where death occurred, and the use of such permits. He shall require a coupon to be attached to every such permit, to be detached and preserved by every common carrier, or person in charge of any vessel, car or vehicle, to whom any such corpse shall be delivered for transportation.

And sec. 22, Art. 2, thereof provides for the supervision by local boards of health of the registration of all births, marriages and deaths occurring within the municipality, and the cause of death, and the finding of coroners' juries in accordance with forms, etc., prescribed by the State department of health.

By the Public Health Law (Laws of 1893, Ch. 661, sec. 23, as amended by Laws of 1899,



Ch. 211) it is provided that every local board of health shall prescribe sanitary regulations for the burial and removal of corpses, and shall designate the persons who shall grant permits for such burial, and permits for the transportation of any corpse for burial outside the county. Every undertaker, sexton or other person having charge of any corpse, shall procure a certificate of the death, and the probable cause, certified by the physician in attendance upon the deceased during his last illness, or by the coroner where an inquisition is required by law, and if no physician was in attendance, and no inquest has been held, or required, an affidavit stating the circumstances, time and cause of death, and sworn to by some credible person known to the officer granting the permit, and there shall be no burial or removal of a corpse until such certificate or affidavit has been presented, and a permit obtained. When application is made for a permit to transport a corpse over any railroad, or upon any passenger steamboat within the State, the board of health, or the officers to whom such application is made, shall require such corpse to be inclosed in a hermetically sealed casket of metal or other indestructible material, if the

cause of death shall have been from a contagious or infectious disease.

*Embalmers.*

In New York State, the vocation of an embalmer is generally allied with that of an undertaker. In 1898 the legislature established a State board of embalmers. The Laws of 1898, Ch. 555, provide that after the 1st of July, 1898, there should be a board of embalming examiners in the State of New York, consisting of five members, all of whom must have had at least five years' experience as practical embalmers. The board shall, from the opinions of five well-known physicians, prescribe the using, before embalming, of such tests as they deem necessary, to ascertain whether life is extinct. The board is authorized to issue subpoenas, and administer oaths to witnesses, and to make rules to regulate the practice of embalming, subject to the approval of the State board of health.

Sec. 4 (as amended by Laws of 1899, Ch. 324) provides that persons engaged as embalmers on 23rd April, 1898, might be regis-

tered and licensed as embalmers on making application as provided, before the 1st September, 1899.

Secs. 5 and 6 provide for the examination of persons, desiring, after the passage of the act, to become embalmers, and, on the recommendation of the State board of health, for the licensing and registration of such persons as embalmers of human dead bodies, on payment of the fee (\$15) imposed in the act, the license to be registered at the office of the board of health of the city, town or place where it is proposed to carry on the business, and to be displayed in a conspicuous place in the office, etc., of the licensee.

Sec. 7 provides that no license shall be assignable, except that the section shall not apply to any personal representative of a deceased licensed embalmer, who engages in the business of undertaking and embalming with a duly licensed embalmer.

Sec. 9 provides that no persons, except those licensed under the act, and except licensed physicians, surgeons, commissioned medical officers in the army of the United States, or in the United States Marine Hospital service, and the

resident medical staff of an incorporated hospital, shall practice as embalmers.

Sec. 10 provides that any violation of sec. 9 or of the rules and regulations made and prescribed by the act, shall be a misdemeanor.

### *Burials.*

The right to bury a corpse is a legal right, vested, in the absence of testamentary disposition, exclusively in the next of kin, and includes the right to select and change the place of interment. (Matter of Brick Church, 3 Edw. 135; Matter of Beekman St., 4 Bradford, 503.)

It is the right of every person to have decent burial after death. The necessary and proper expenses of burial are a charge upon his estate, and the duty of burial primarily rests upon the personal representatives, but it is the duty of any person, under whose roof a dead body lies, to see that it has decent burial. But, except in the case of one who intermeddles officiously, the estate of the decedent is finally liable for the expense, and, although a husband is bound to bury the corpse of his wife, and may be sued for the expense of same by one who, by reason of his

neglect, or absence, incurs the cost of such interment, he is entitled to be reimbursed the amount thereof out of her personal estate. (*McCue v. Garvey*, 14 Hun, 562; *Griffin v. Condon*, 18 Mis. 236.)

When, however, the employer of a decedent informed an undertaker that he had \$300 of the decedent's money, and that, if the latter's son would not pay the funeral expenses out of \$125 insurance he was entitled to receive, he, the employer, would pay same, the employer was properly held liable to pay the undertaker's bill of \$127, the defendant's promise being original, and the Statute of Frauds having no application. (*Griffin v. Condon*, 18 Mis. 236.)

As between the husband and the next of kin of a deceased wife, the husband has the right to select her burial place. (*Johnston v. Marinus*, 18 Abb. N. Cas. 72.)

When a widow has properly interred the body of her deceased husband, she can restrain a son by a former wife, from removing them to another place of interment. (*Secor v. Secor*, 18 Abb. N. C. 78.)

The court will determine upon equitable grounds, a controversy between a widow and son

as to a decedent's place of burial. As whilst there is property in the burial lot, and in the shroud, ornaments, etc., there is none in the remains themselves. In such case, the remains were allowed to be interred in the cemetery where decedent's first wife and his children were buried in preference to a cemetery selected by the widow by whom decedent had no children. (*Snyder v. Snyder*, 60 How. Pr. Rep. 372.)

Although adult relatives of a decedent who are not his next of kin, should, when the next of kin are minors, see to the proper burial of their relative (*Copper's case*, 7 Abb. N. C. 121) they cannot, when the right to burial in a particular place depends upon a contract made by deceased, enforce same. Such rights can only be enforced by those to whom they have descended. (*People v. Coppers*, 21 Hun, 196.)

A church has no right to the custody or control of the body of a member of it. (*In re Donn*, 14 N.Y. S. 189), in which case it was held, however, that a decedent who was a Catholic, and buried at her request in the consecrated ground of a Catholic Church (her husband, although of a different belief, consenting) equity would not, at the instance of her children, compel the



church to permit the removal of the body for interment beside her husband, who was interred in a non-Catholic cemetery.

Funeral expenses have priority over every other claim against a decedent's estate, and the duty of burial devolves upon the executor, who is liable to one, who from necessity, pays the expenses. (Patterson v. Patterson, 50 N. Y. 574; Matter of Miller, 4 Redf. 302; Rappalzea v. Russell, 1 Daly, 214; Ferrin v. Myrick, 41 N. Y. 315; Kessell v. Hupen, 8 N. Y. St. Rep. 352.)

An undertaker is entitled to be paid in full, when he furnishes funeral requisites suitable to deceased's rank in life from his knowledge of the apparent condition of deceased's property, and, is entitled to be paid in full, even although the estate is insolvent. (Matter of Rooney, 2 Red. 15.)

It is now provided by Code of Civ. Proc., sec. 2729, subd. 3 (as added by Laws 1901, Ch. 293) that every executor or administrator shall pay out of the first monies (of the estate) received, the reasonable funeral expenses of decedent, and the same shall be preferred to all debts and claims against decedent, and if the same be not

paid within sixty days from grant of letters, a summary proceeding by petition and citation is provided to compel the executor to pay out of the monies so received the reasonable amount of same, and for the renewal of such an application from time to time if the executor shall not have received sufficient means to defray same at the time of the application.

This provision is of great advantage to undertakers who are often obliged to wait for a considerable period before settlement of their claims for funeral expenses.

It is further provided by the same section that if the executor shall not pay a sum so allowed by surrogate for funeral expenses, he shall not be allowed for debts of decedent until such claim is paid, but such claim shall not be paid before the expenses of administration are paid. It is provided that the act shall not take effect till September 1, 1901.

### *Burials.*

A person may by his last will provide for the disposition of his body after death. (Matter of Beekman, 4 Brad. 503.) And this right is now

recognized by statute, Penal Code, sec. 365 of which provides that a person has the right to direct the manner in which his body shall be disposed of after his death, and also to direct the manner in which any part of his body which becomes separated therefrom during his lifetime shall be disposed of, and the provisions of Penal Code, Ch. 6, as to burial, dissection, etc., will not thereupon apply when they are inconsistent with such direction.

By sec. 206, it is provided that except in cases where a right to dissect is expressly conferred by law, every dead body of a human being must be decently buried within a reasonable time after death, but a body may be carried through the State, or removed for interment elsewhere (sec. 307.)

Secs. 308-9-10 provide for dissections and burial after dissections.



# FORMS.

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## *No. 1.*

### CERTIFICATE OF INCORPORATION OF A CEMENTERY CORPORATION FOR PURPOSES OF PROFIT, UNDER THE BUSINESS CORPORATIONS LAW.

The undersigned natural persons of full age, being desirous of becoming a stock corporation for cementery purposes under the Business Corporations Law, hereby make, sign, acknowledge, and file this certificate in the office of the Secretary of State and the clerk of the county of (state name of county in which office of the corporation is to be located) in pursuance of sec. 2 of the Business Corporations Law.

1. Two-thirds of the undersigned are citizens of the United States, and one of them is a resident of the State of New York.

2. The name of the proposed corporation is (state name of proposed corporation).

3. It is intended to form it for cemetery or burial purposes.

4. The amount of its proposed capital stock is \$                      of which \$                      shall be preferred stock (state different classes, if any).

5. The number of shares of which the capital stock shall consist is                      shares, each of the value of \$                      (not less than \$5 or more than \$100).

6. The amount of the capital with which said corporation shall begin business is \$                      (state amount of capital—not to be less than \$500).

7. The place where the principal business office is to be located is (state name of city, village or town where principal business office is to be located).

8. The duration of the proposed corporation shall be (state duration of intended corporation—if without a limit, state for an indefinite period).

9. The number of its directors is (state number not less than three).

10. The names and post-office addresses of the



directors for the first year, two of whom are residents of the State of New York, are (here state names and post-office addresses of directors for first year).

11. The names and post-office addresses of the subscribers to this certificate, and the number of shares of stock which each agrees to take in the corporation are as follows: (State names, post-office addresses of, and number of shares of stock taken by each subscriber to the certificate, thus:

| Names. | P. O. Addresss. | No. of shares of stock<br>taken. |
|--------|-----------------|----------------------------------|
|--------|-----------------|----------------------------------|

(It is not necessary that all the subscribers should sign the certificate. *Yonkers Gazette Co. v. Taylor*, 30 App. Div. 334.)

(State any other provision for the regulation of the business and the conduct of the affairs of the corporation, and any limitation upon the powers of its directors and stockholders which does not exempt them from any obligation, or from the performance of any duty imposed by law. The certificate may provide for cumulative voting at elections of directors (*Genl. Corp. Law*, sec. 20), and may also provide for acquiring stock of other corporations.)

In witness whereof we have on this       day  
of       , 190 , signed this certificate  
and a duplicate thereof to be filed as aforesaid.  
(Here the proposed incorporators, not less than  
three in number, will sign.)

On this       day of       , 190 , be-  
fore me personally came (here give names of  
signatories to certificate) personally known to me  
to be the persons named in and who signed the  
foregoing certificate, and severally acknowledged  
to me that they subscribed the same for the pur-  
poses therein mentioned.

(Signature of notary.)

(Note.—The tax of one-twentieth of one per  
cent. of the capital stock must be paid to the  
State Treasurer before filing of certificate.  
Tax Law, sec. 180, as amended by Ch. 448 of  
Laws of 1901. Fee on filing in Secretary of  
State's office ten dollars. (Laws 1891, Ch. 683,  
sec. 26; as amended in 1897, Ch. 411.) Secre-  
tary of State for recording certificate, 15 cents  
per folio of 100 words (Laws 1892, Ch. 683.)  
Fee on filing in County Clerk's office, 6 cents;  
recording in same office 10 cents per folio.  
(Code Civ. Proc. sec. 3304.)

*No. 2.*

## CERTIFICATE OF INCORPORATION OF A CEMETERY CORPORATION UNDER MEMBERSHIP CORPORATION LAW.

The undersigned natural persons of full age, being desirous of becoming a cemetery corporation under the provisions of the Membership Corporation Law (Art. 3) hereby make, acknowledge, and file in the office of the Secretary of state, and of the clerk of the county (county in which cemetery or a part thereof is to be situated) as required by sec. 41 thereof, and sec. 4 of the General Corporation Law, viz.:

1. Two-thirds of the undersigned are citizens of the United States, and one of them is a resident of the State of New York.

2. The cemetery of said corporation is to be situated (state name of county, town, city and village in which such cemetery, or any part thereof, is to be situated).

3. The name of such proposed corporation is (state name).

4. The time of holding the annual meeting of such corporation shall be (state day of month

when the annual meeting is to be held) in each year.

5. The number of the directors of the proposed corporation shall be (state the number of the directors, which must be either six, nine, twelve or fifteen).

6. The names of the persons to be directors until others are elected in their places, divided into three equal classes, each to hold office until the first, second and third annual meetings respectively are:

(a) to hold office until the first meeting (state names of one-third of the directors).

(b) to hold office until the second annual meeting (states names of one-third of the directors).

(c) to hold office until the third annual meeting (state names of one-third of the directors).

7. (The following may be specified at the option of the promoters.) Out of the surplus proceeds of sales of lots, after payment of the purchase price of the real property of said proposed corporation, it is intended to invest — per cent. as a permanent fund, the income of which shall be used for the improvement, preservation and

embellishment of the cemetery grounds, and for no other purpose.

In witness whereof we have on this       day of       in the year 19   , signed this certificate and a duplicate thereof to be filed as aforesaid.

(Here the proposed incorporators, not to be less than seven in number, will sign.)

State of New York,       } ss.:  
County of       }

On this       day of       19   , before me personally came (here give names of signatories), personally known to me to be the persons named in and who signed the foregoing certificate, and severally acknowledged to me that they subscribed the same for the purposes therein mentioned.

(Signature of notary.)

(The approval of a justice of the Supreme Court must be endorsed or annexed thus):

I hereby approve of the foregoing (or within) certificate.

(Signature of justice of the Supreme Court.)





tion for five years. The names and addresses of such directors are as follows: (Give names and addresses of directors).

2. The name of the proposed private cemetery corporation is (state name of proposed corporation).

3. The lands so set apart contain (give area, not more than three acres), and are bounded, described and situated as follows: (Describe lands set apart).

4. (If the facts be so, state as follows:)

No portion of said land is within one hundred rods of any dwelling house.

(Or if otherwise, and owner's written consent has been obtained, state in the alternative.)

5. As portion of said cemetery is located within one hundred rods of a dwelling house, the written consent of the owner of said house to such location has been obtained, and is hereto annexed, and made a part of this certificate.

Dated this      day of                      , 190 .

Chairman.

Secretary.

(Add certificate of acknowledgment as in form 1.)

(Fee on filing in County Clerk's office, 6 cents and 10 cents a folio.)

Consent of owner to annex to certificate (form No. 3), where cemetery is located within one hundred rods of his dwelling house:

I consent to the location within one hundred rods of my dwelling house, situate at (describe situation), in the county of \_\_\_\_\_, of the cemetery of the proposed private cemetery corporation to be known as (give name of cemetery corporation).

Dated

190 .

(Signature of owner.)

State of New York,

County of New York,

ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 1901, before me came (owner's name), to me known to be the person described in and who signed the foregoing consent, and he acknowledged to me that he executed the same.

(Notary.)

*No. 4.*

## CERTIFICATE OF INCORPORATION OF AN UNINCORPORATED CEMETERY, PURSUANT TO SECS. 61-3, MEMBERSHIP CORPORATION LAW.

The undersigned, natural persons of full age, two-thirds of them being citizens of the United States, and one of them a resident of the State of New York, and being at least three of the owners of lots in an unincorporated cemetery, desirous of becoming a cemetery corporation pursuant to secs. 61-3 of the Membership Corporation Law, do certify:

1. That not less than three of the owners of lots in said cemetery caused a notice to be posted in at least six conspicuous places in the (describe location of cemetery—city, town or village) where such cemetery is located, and published once in each week for three successive weeks in a newspaper (if any) published in said municipality, a notice mentioning that at the time and place specified in such notice, a meeting of the owners of lots in such cemetery should be held to determine upon the question of incorporating such cemetery, pursuant to Article

three of the Membership Corporation Law. Such notice, with an affidavit of the posting thereof, and an affidavit of its publication in such newspaper, are hereto annexed.

2. That such meeting was held at a convenient place in the (city, town or village) in which such cemetery is located on the            day of           , 19   , being not less than twenty-five nor more than thirty days after the first posting and publication of the notice of the meeting. That            and            were selected as chairman and secretary of said meeting by the persons entitled to vote thereat.

3. The persons entitled to vote at such meeting, either in person or by proxy; then determined by ballot the question whether or not the owners of lots in such cemetery should organize as a corporation pursuant to Article three of the Membership Corporation Law, and a majority of such ballots were in favor of such proposition.

4. That thereupon the persons entitled to vote at such meeting, in person or by proxy, selected the undersigned three lot owners in such cemetery to incorporate in pursuance of Article three of the Membership Corporation Law.

(Here add the other particulars specified in

form No. 2, except that the corporation shall not be required to have more than three directors, and add certificate of acknowledgment as in form No. 2.)

*Notice of Meeting.*

Take notice, that a meeting of the owners of lots in the (give name of unincorporated cemetery) will be held at (mention a convenient place in the city, town or village in which the cemetery is located) on the       day of  
19    , at       o'clock in the       noon (insert a date not less than twenty-five nor more than thirty days from the first posting and publication of the notice), to determine upon the question of incorporating such cemetery pursuant to Article three of the Membership Corporation Law.

Dated this       day of       , 18    .

(At least

three to

sign.)

Owners of lots in said cemetery.

*Affidavit of posting.*

State of New York,

County of

ss.:

, being duly sworn, deposes and says that he is aged      years and upwards. That on the      day of      , 19      , he posted in six conspicuous places in the (city, town or village) where the      cemetery is located, the said places being as follows (describe them), a copy of the annexed notice, which he received for the purpose from      , one of the signatories thereto, on behalf of the remaining signatories.

(Deponent's signature.)

Sworn to before me this

day of      , 1900.

(Notary's signature.)

*Affidavit of Publication.*

State of New York,

County of

,ss.:

being duly sworn, deposes and says that he is (proprietor or foreman printer) of the      news-



paper published in and circulating in the (city, town or village where cemetery is located) where the cemetery mentioned in annexed notice is located. That a copy of said notice was received by deponent from \_\_\_\_\_, one of the signatories thereto, on behalf of the other signatories, for the purpose of publication in said newspaper. That said notice was published in said newspaper once a week for three successive weeks, the first publication being made on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

(Signature.)

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

(Notary.)

*Certificate of Justice.*

I approve of the foregoing (or within) certificate.

(Signature of a justice of the Supreme Court.)

(Fees on filing in the office of the Secretary of State and of the clerk of the county where cemetery is situate, the same as in the case of incorporating a cemetery corporation. See form 2. If the title to the cemetery shall have previ-



dred rods of a dwelling house (if the fact be so; otherwise add) The said lands are located within one hundred rods of the dwelling house of \_\_\_\_\_, whose consent to such location is hereto annexed.

(The following may be added at the option of the dedicator.

I hereby appoint the following persons, viz.: (describe them) to be directors to manage such cemetery during their lives or until resignation (or specify shorter period).

I direct that on the death, resignation, refusal or inability to act of any of said directors, his successor shall be chosen by the remaining directors, or a majority of them, preference in such choice being primarily given to members of my own family, and in the next place to the families of \_\_\_\_\_ (or the deed may direct any other method of creating successors), and such successor shall hold office during life, or until death, resignation, refusal or inability to act as aforesaid.

I direct that there shall be paid out of my property the annual sum of \_\_\_\_\_ to said directors and their successors, to be expended by them in maintaining, improving and embel-

lishing said cemetery, on their giving bond to the surrogate of the county of \_\_\_\_\_ as required by sec. 57 of the Membership Corporation Law.

And I direct that the said directors shall adopt the following by-laws for the management of said cemetery: (specify them, or specify any other method by which money or personal property is to be given to directors for such purpose, and specify particulars of improvements, etc., if desired).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_  
(Signature.) [L. S.]

(Add acknowledgment.)

*(b) Will Dedicating Land.*

I, \_\_\_\_\_, do hereby, by this, my will, in pursuance of sec. 57 of the Membership Corporation Law, (here follow the preceding form *a*, except that the fund for improving the cemetery should not exceed 10 per cent. of testator's estate after payment of his debts. The will may appoint executors and direct them to effectuate testator's purpose, and

should be executed in presence of two witnesses, in accordance with the statutory requirement).

(Add attestation clause.)

(Annex affidavit of one of the witnesses and notary's certificate identifying such witness.)

*(c) Authority of Heirs.*

The undersigned heirs, next of kin, devisees and legatees of \_\_\_\_\_ in the county of \_\_\_\_\_, deceased, and the undersigned \_\_\_\_\_, general guardians of an infant heir, etc., of said deceased, hereby authorize

\_\_\_\_\_, the executors, administrators or trustees (as the case may be) of said decedent, to dedicate the following described lands for a family cemetery by the name of \_\_\_\_\_, for the family of said decedent, and in which the remains of said decedent are to be interred: (describe lands, not more than three acres, and add as to location near a dwelling house; see previous forms), or to purchase out of the funds under their control suitable lands to be dedicated by them for such purpose, not exceeding three acres, and we also authorize

them to pay to the directors of such cemetery (specify money or personal property) for improving, maintaining and embellishing the same as follows: (Give particulars).

Dated, etc.

(Add notary's certificate.)

*(d) Executors' Deed of Dedication.*

(Use form *a*, making necessary changes.

*(e) Acceptance by Directors.*

We, the undersigned, (give directors' names and addresses), accept the appointment of directors of the family cemetery to be known as \_\_\_\_\_, conferred upon us by the annexed instrument of dedication.

Dated, etc.

(Directors' signatures.)

(Add notary's certificate.)

NOTE.—All the foregoing instruments are to be filed in the office of the county where the cemetery is situated, and thereupon the cemetery becomes incorporated by the name expressed



in the dedication. Fees on filing, 6 cents on each instrument, and 10 cents per folio.

The directors shall give bond to the surrogate and file an annual account with him of receipts and expenditures, with vouchers.

---

*No. 6.*

DEED OF A CEMETERY LOT BY A CEMETERY  
INCORPORATED UNDER THE GENERAL LAWS.

Know all men by these presents, that the  
Cemetery, in consideration  
of                      dollars to it paid, hereby grants  
unto                      , his heirs and assigns  
forever, the use of the following described lot  
designated on the map filed in the office of said  
corporation, situate in                      Cemetery  
in the town of                      , county of  
and State of New York, viz.:

To hold to said                      , his heirs,  
and assigns forever, to be used as a place of  
burial for the dead forever (or the conveyance  
of a lot in a membership corporation may desig-

nate any particular person or persons to whom the lot shall descend on the death of the grantee—sec. 49, Mem. Corp. Law). Subject to the provisions of the acts under which said cemetery was incorporated, and to the by-laws, rules and regulations made or to be made, in conformity therewith.

In the case of Catholic cemeteries, add “This conveyance is also made expressly subject to the canons, rules and decrees of the Catholic Church respecting the burial of the dead.”)

In witness whereof, the said Cemetery has caused this instrument to be signed by its president and secretary, and its corporate seal to be hereunto affixed, this day of                      , 19   .

President.

Secretary.

Corporate  
(Seal.)

State of New York,  
County of

} ss.:

On this              day of              , 19   , before

me personally appeared \_\_\_\_\_, to  
me personally known, who being by me duly  
sworn, says that he is a resident of the county  
of \_\_\_\_\_, town or city of \_\_\_\_\_; that  
\_\_\_\_\_, who is president of  
Cemetery, and deponent, who is secretary there-  
of, executed the foregoing deed by authority of  
the board of directors or trustees of said cor-  
poration; that deponent knows the corporate  
seal of said corporation; that the seal affixed to  
the foregoing deed is said seal, and was so af-  
fixed by authority of the said board.

Notary.

---

No. 7.

TRANSFER OF A LOT IN A CEMETERY INCOR-  
PORATED UNDER THE GENERAL LAWS.

NOTE.—The previous form may be used,  
making the lot owner the grantor, and adding  
the form of acknowledgment applicable to an  
individual. In the case of a membership cor-  
poration cemetery, the use of a lot can be only  
sold when no interments have been made there-

in, or all the bodies have been lawfully removed therefrom, and the consent of the corporation must be obtained. An heir may release to his co-heirs, or one joint owner to another, or the lot owner may reconvey to the corporation. Sec. 49, Mem. Corp. Law.

When the by-laws so require the consent in writing of the corporation should be endorsed on the transfer, and it should be recorded in the office of the corporation; and in the case of religious corporations, in the office of the clerk of the county where the cemetery is situated. Sec. 7, Religious Corporations Law.

---

No. 8.

DEED OF A CEMETERY LOT BY A CEMETERY  
INCORPORATED UNDER SPECIAL LAW.

NOTE.—Form No. 6 may be used, with any necessary verbal changes. The special act may be cited in the *habendum* clause; an absolute title to the land, or an easement only may be conveyed, as may be agreed on, subject to the provisions of the act and the by-laws.

Where the special act does not provide for a conveyance of the lot, some cemetery corporations (especially Catholic cemeteries) merely give a receipt for the price of the lot, the effect of which is to confer a license only on the purchaser to make interments.

---

*No. 9.*

TRANSFER OF LOT IN A CEMETERY INCORPORATED UNDER A SPECIAL LAW.

Form as in No. 8 may, subject to the provisions of the act and by-laws, etc., be used.

The consent of the Cemetery should be endorsed in writing when required, and the transfer should be recorded as required by the act and by-laws.

---

*No. 10.*

FORM OF ORDER FOR INTERMENT.

To the Superintendent of the Cemetery:  
Please open a grave in Lot No. , Sec. No.  
, for the remains of .

Place of birth.

Place of death.

Time of death.

Married. single, widower, widow.

Late residence, No. street.

Age, years, months, days.

Box or coffin.

Size on top, feet inches long,  
inches wide.

Funeral in in on  
the day of at  
o'clock M.

Dated 19 .

Undertaker.

Informant.

Interment, \$. . . . .

Evergreens, \$. . . . .

Grave, labor, \$. . . . .

N. B.—This blank must be filled and location of grave particularly designated by diagram, or staked on lot 24 hours before interment.

NOTE.—Nearly all cemetery corporations



provide their own forms of interment orders, and in some cases the undertaker is held responsible for any orders given by him. It is desirable, therefore, that lot owners, undertakers and others interested, should provide themselves with copies of the rules, regulations and by-laws, so as to become properly acquainted with their rights and liabilities. Such rules, however, must be reasonable.

In addition to this interment order, a permit for the burial must be obtained from the local board of health, which can only be had on the certificate of the physician who attended decedent, or an affidavit by some credible person. And in the case of Catholic cemeteries, proof is required, by certificate from deceased's pastor, or otherwise, that decedent is entitled to burial in the consecrated grounds of the cemetery. .

---

*No. 11.*

NOTICE OF LIEN ON A MONUMENT, GRAVE-  
STONE OR CEMETERY STRUCTURE.

To \_\_\_\_\_, the Superintendent  
of \_\_\_\_\_ Cemetery in the

of of  
 (the person with whom agreement was  
 made), and of  
 (the lot owner. If latter's name be un-  
 known, omit any reference to him), and  
 all other persons concerned:

Take notice, that under Article III of the  
 Lien Law (Laws 1897, ch. 418, sec. 40), I, the  
 undersigned , residing at  
 in the of ,  
 claim a lien upon a certain monument (grave-  
 stone, or other cemetery structure), under the  
 following circumstances:

1. On the day of , 19 ,  
 I agreed with , residing at  
 for the sale (and  
 erection) of a monument (gravestone or ceme-  
 tery structure) to be erected in the  
 cemetery (or burial ground) situated at  
 ; or I agreed with , resid-  
 ing at , for the perform-  
 ance of work and labor in and about the fur-  
 nishing and erection of a monument (grave-  
 stone or cemetery structure), to be erected in  
 Cemetery in the of .
2. That such monument, etc., is of the fol-

lowing description (describe monument or other structure).

3. That the amount agreed to be paid to me by said \_\_\_\_\_ for such (monument, etc.) and the erection thereof (or for labor performed in the furnishing and erection of such monument) was \$ \_\_\_\_\_.

4. That said (monument, etc.) was erected upon a plot in said cemetery described and located as follows: (Describe and give location of the lot).

5. That said work was completed on the day of \_\_\_\_\_, 19\_\_\_\_, when said price agreed to be paid therefor became due (or as the fact may be).

6. That of such agreed price, there remains unpaid the sum of \$ \_\_\_\_\_, with interest from the time when same became due as aforesaid.

Dated \_\_\_\_\_ 190\_\_\_\_.

(Signature.)

State of New York,

County of \_\_\_\_\_ ss.:

\_\_\_\_\_, being duly sworn, deposes and says that he is the person named as lienor in and who has subscribed the foregoing notice; that he has read the same and knows

its contents; that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those he believes it to be true.

(Signature.)

Sworn to before me this

day of \_\_\_\_\_, 19 .

(Notary.)

---

*No. 12.*

FORM OF DEVISE AND BEQUEST TO A CEMETERY CORPORATION.

I hereby devise unto the corporation duly incorporated under Article III of the Membership Corporation Law, known as Cemetery, the following described lands forming one continuous tract (describe them), to be used exclusively for the purposes of a cemetery, and also the following described lands (describe them), for the purpose of supplying water for the use of said cemetery, and I au-

thorize said corporation to lay, relay, repair and maintain conduits and water pipes with connections and fixtures in, through or over my lands situated at (describe them), and I authorize said corporation to divert the flow of waters from the stream bounding my lands at (describe them), for the use of said cemetery, and I devise to said corporation the following described lands (describe them), for the purposes of the convenient transaction of its general business, no portion of which shall be used for the purposes of a cemetery.

And I devise and bequeath unto the said corporation the following real and personal property (describe same), upon trust to use same or the income thereof for the purposes mentioned in subds. 1, 2, 3 and 4 of sec. 45 of the Membership Corporation Law, and for no other purposes.

And in case the amount and value of real and personal property so devised and bequeathed by me as aforesaid, should exceed what may be lawfully required by said corporation, I direct that said corporation may select from the real and personal estate devised as aforesaid such part

as it may by law acquire, and I devise and bequeath to it the part or parts so selected for the purposes aforesaid.

---

*No. 13.*

FORM OF DEVISE OR BEQUEST TO A CORPORATION INCORPORATED UNDER SPECIAL LAW.

NOTE.—Reference should be first made to the special law to ascertain to what extent the corporation may be empowered to accept devises or bequests and for what purposes, and the will should be prepared in accordance therewith. The following is a form of devise and bequest to a corporation organized under a special act:

I devise and bequeath to St. Agnes Cemetery, situated in the County of Albany, State of New York, the following described real and personal property (describe same), for the improvement and embellishment of said cemetery, and of the buildings, structures and fences



erected or to be erected upon the lands of said corporation (or for the other purposes mentioned in the fourth section of the special act of incorporation, Laws 1867, ch. 853).

---

*No. 14.*

FORM OF DEVISE OR BEQUEST TO A RELIGIOUS  
CORPORATION CREATED UNDER THE RELIGIOUS  
CORPORATIONS LAW.

I devise to the (give name and location of corporation) the following described lands for the purposes of a cemetery, and I also devise and bequeath to it the following described real and personal property (describe same), upon trust, to apply the same or the income or proceeds thereof, under the direction of the trustees of the corporation, for the improvement and embellishment of such cemetery (or any lot therein, including the erection, repair, preservation or removal of tombs, monuments, gravestones, fences, railings, or the planting or

cultivation of trees, shrubs, plants or flowers in and around any such cemetery or cemetery lots).

---

*No. 15.*

FORM OF DEVISE OR BEQUEST TO A CITY OR VILLAGE FOR CEMETERY PURPOSES.

I devise and bequeath to the City of  
(or the village of) the following described lands for cemetery purposes, to hold same in accordance with the provisions of Laws of 1870, ch. 760 (or sec. 290 of the Village Law).

(Add devise and bequest of property for the improvement of the cemetery under sec. 295.)

---

*No. 16.*

FORM OF BEQUEST TO A BOARD OF TRUSTEES OF A TOWN CEMETERY. (Town Law, sec. 193.)

I bequeath to the board of trustees of the burial ground or grounds in the town of , county of , the following personal property (describe same), for the care and im-

provement of the cemeteries under their charge (or of the following lots therein, describing same).

---

*No. 17.*

FORM OF DEVISE OF BEQUEST FOR PERPET-  
UAL CARE OF A LOT.

I devise to the Cemetery  
the following described lands (describe them),  
and I also bequeath to the said corporation the  
following described personal property (describe  
same), upon trust, to apply the income thereof  
to the perpetual care of my lot in said cemetery.  
(If desired, add details as to the manner in  
which the lot is to be cared for.)



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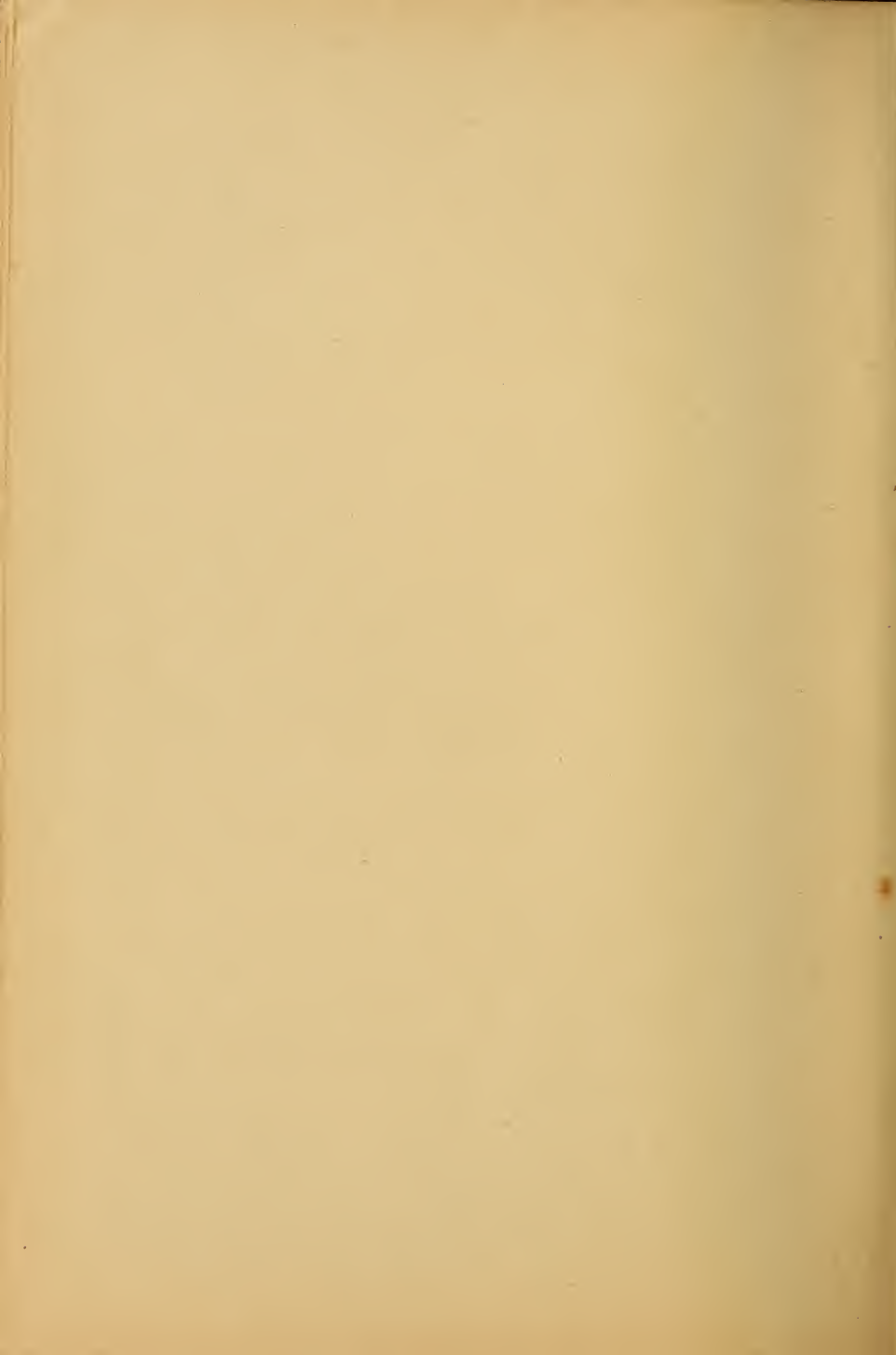
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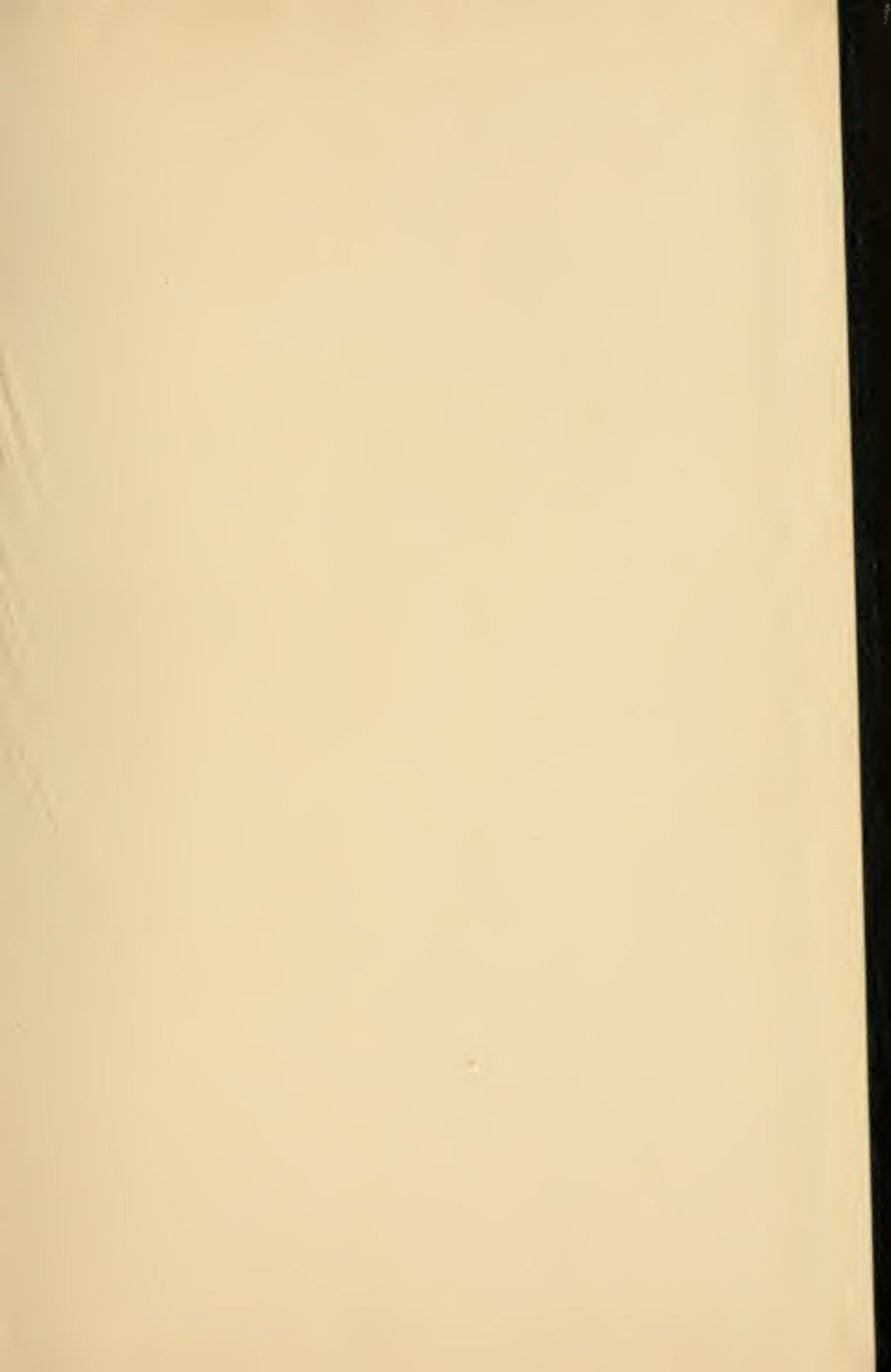
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